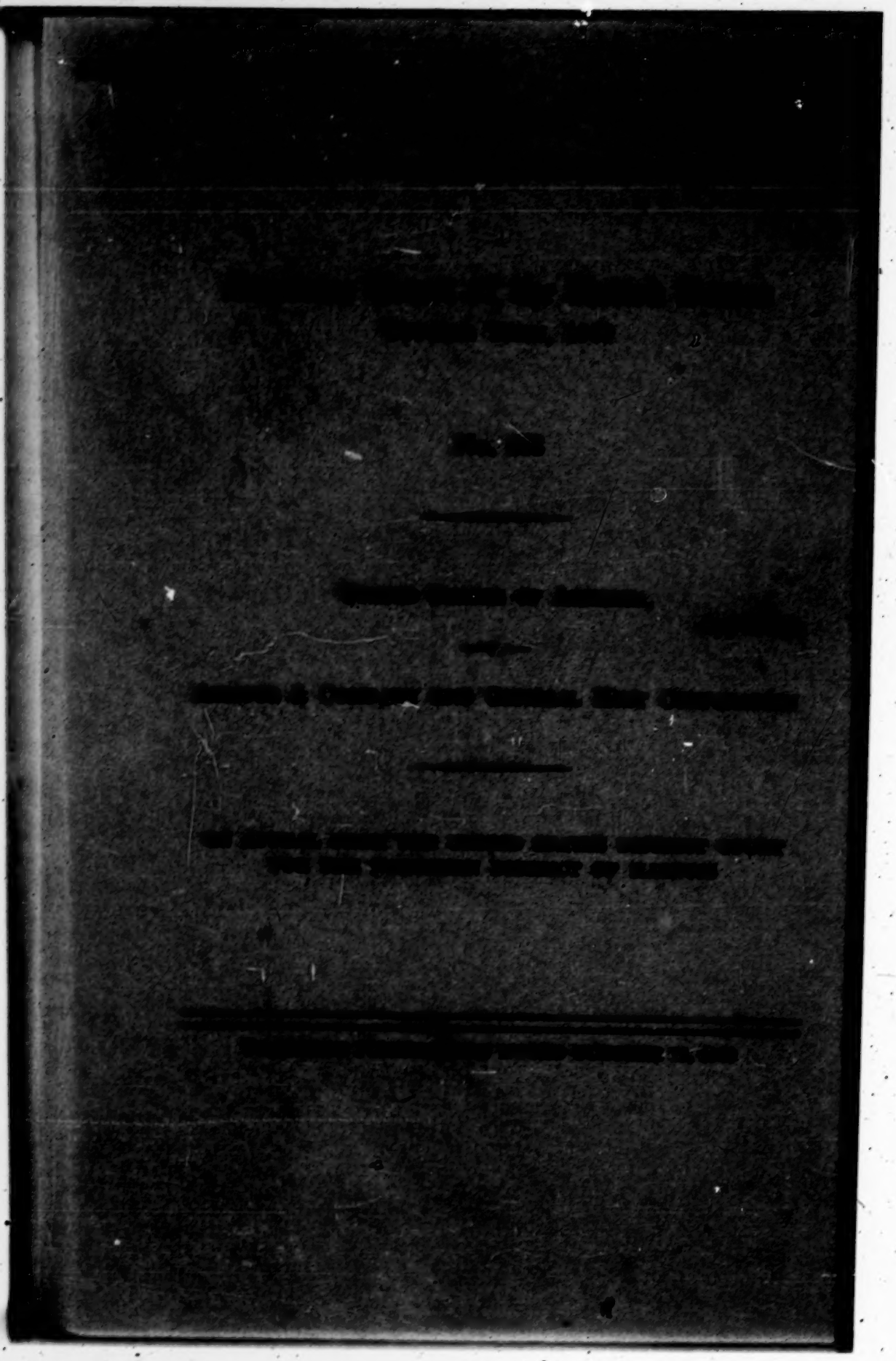

Supreme Court of the United States

OCTOBER TERM, 1969

No. 103

UNITED STATES OF AMERICA,

Appellant,

—v—

ARMOUR & COMPANY AND GENERAL HOST CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil No. 58 C 613

UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT AND COMPANY, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

Date	
1/21/69	Filed petitioner's notice.
1/20/69	Filed Petition for Injunction by U.S.
1/20/69	Filed affidavit Edna Lingreen, in support of Government's petition for injunction.
1/20/69	Filed Government's Memorandum in support of petition for injunction.
1/21/69	Argument heard; the court rules on the Petition of the Government for injunction against General Host Corporation. Leave to General Host Corporation to file such documents as it and its counsel may deem appropriate within 5 days, etc. reserving the right that is, the right in General Host Corporation not to file anything if it concludes not to do so. General Host Corporation given 5 days to prepare and submit Proposed Findings of Fact, Proposed Conclusions of Law and proposed Judgment Order, reflecting the Court's views in its ruling.-Hoffman, J. Mailed notices 1-23-69
1/27/69	Filed Notice of service re Proposed Findings, etc.

Date	
1/27/69	Filed Memorandum in opposition to Government's Application for a temporary restraining order.
1/27/69	Filed Response to Petition for Injunction.
1/27/69	Filed Memorandum in opposition to Government's Petition for injunction.
1/27/69	Filed Affidavit of Harris J. Ashton in opposition to Government's Petition for an injunction with exhibits A thru G.
1/27/69	Filed Affidavit James H. Kelley in opposition to Government's Petition for an injunction.
1/30/69	Enter Findings of Fact and Conclusions of Law.—Draft.
	Enter Judgment Order:
	Ordered that the Government's request that summons be issued pursuant to 15 U.S.C. Sec 5 commanding General Host Corporation to appear and answer the allegations contained in the petition is denied, and it is Further Ordered that the Government's requests for a temporary restraining order and an injunction against General Host Corporation are denied; and it is Further Ordered that the Government's petition for injunction is denied.—Draft-Hoffman, J.
	Mailed notices 1-31-69
3/28/69	Filed Plaintiff's Notice of Appeal to the U. S. Supreme Court.
4/22/69	Filed Clerk's file copy of transcript of proceedings had before Hon. Julius J. Hoffman, on October 31, 1968.
4/22/69	Filed Clerk's file copy of transcript of proceedings had before Hon. Julius J. Hoffman, on January 21, 1969.
4/23/69	Filed Designation of Record to be Certified.

Date	
4/24/69	Filed Letter dated April 23, 1969 from Leslie Hodson to Elbert A. Wagner, Jr., Clerk of Court that Armour & Company will not take any further part in the appeal from the denial of the petition for injunction filed January 20, 1969.
4/28/69	Filed copy of letter from Erwin N. Griswold to Elbert A. Wagner, Jr., Clerk, that Swift & Company, Wilson & Company and the Cudahy Company will not be treated as parties in the appeal.
5/ 2/69	Designated certified copies on appeal delivered to John E. Sarbaugh, Chief, Midwest Office, for appellants, to be filed in Supreme Court of the United States in two (2) Volumes.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity, No. 37623

UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT & COMPANY, ARMOUR AND COMPANY, MORRIS & COMPANY, WILSON & CO., INC., and THE CUDAHY PACKING COMPANY, ET AL., DEFENDANTS

PETITION

To the honorable JUDGES OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, sitting in equity:

The United States of America, by John E. Laskey, its attorney for said district, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, they being severally duly authorized to act in said capacities by proper lawful authority, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against Swift and Company, a corporation organized under the laws of the State of Illinois; Armour and Company, a corporation organized under the laws of the State of Illinois; Morris & Company, a corporation organized under the laws of the State of Maine; Wilson & Co. (Inc.), a corporation organized under the laws of the State of New York; the Cudahy Packing Company, a corporation organized under the laws of the State of Maine (these corporations are hereinafter referred to as the parent companies), and the following-named corporations and individuals, to wit:

ARMOUR DEFENDANTS

Corporations

Armour & Company, a corporation organized and existing under the laws of the State of New Jersey; Armour & Company, a corporation organized and existing under

the laws of the State of Kentucky; Armour & Company, a corporation organized and existing under the laws of the State of Texas; Armour & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; The Anglo American Provision Company, a corporation organized and existing under the laws of the State of Illinois; The Colorado Packing and Provision Company, a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Company, a corporation organized and existing under the laws of the State of Maine; Hammond Packing Company, a corporation organized and existing under the laws of the State of Illinois; The New York Butchers Dressed Meat Company, a corporation organized and existing under the laws of the State of New York; Atlantic Hotel Supply Company, (Inc.), a corporation organized and existing under the laws of the State of New York.

SWIFT DEFENDANTS

Corporations

Swift & Company, a corporation organized and existing under the laws of the State of West Virginia; Swift & Company (Inc.), a corporation organized and existing under the laws of the State of Kentucky; Swift & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Swift & Company, a corporation organized and existing under the laws of the State of Maine; Swift Beef Company, a corporation organized and existing under the laws of the State of Maine; United Dressed Beef Co. of New York, a corporation organized and existing under the laws of the State of New York; J. J. Harrington & Company (Inc.), a corporation organized and existing under the laws of the State of New York; Bimbler Company, a corporation organized and existing under the laws of the State of New Jersey; The G. H. Hammond Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Packing Company, a corporation organized and existing under the laws of the State of Kentucky; Plankinton Packing Company, a corporation

organized and existing under the laws of the State of Wisconsin; Sturtevant & Haley Beef & Supply Company, a corporation organized and existing under the laws of the State of Massachusetts; E. K. Pond Packing Company, a corporation organized and existing under the laws of the State of Illinois; Van Wagenen & Shickhaus Company, a corporation organized and existing under the laws of the State of New Jersey; Western Packing Company, a corporation organized and existing under the laws of the State of Colorado; Hammond Beef Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Meat Company, a corporation organized and existing under the laws of the State of California; A. Canfield Commission Company, a corporation organized and existing under the laws of the State of New Jersey; H. C. Derby Company, a corporation organized and existing under the laws of the State of New York; Metropolitan Hotel Supply Company, a corporation organized and existing under the laws of the State of Maine; Vermont Supply Company, a corporation organized and existing under the laws of the State of Massachusetts; The Hotchkiss Beef Co., a corporation organized and existing under the laws of the State of New York; F. & C. Crittenden Company, a corporation organized and existing under the laws of the State of New York; George Nye Company, a corporation organized and existing under the laws of the State of Massachusetts; H. L. Handy Company, a corporation organized and existing under the laws of the State of Massachusetts; Swift Coates Company, a corporation organized and existing under the laws of the State of Massachusetts; New England Dressed Meat & Wool Company, a corporation organized and exiting under the laws of the State of Maine; North Packing & Provision Company, a corporation organized and existing under the laws of the State of Maine; The Sperry & Barnes Company, a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Company, a corporation organized and existing under the laws of the State of Maine; John P. Squire & Company (Inc.), a corporation organized and existing under

the laws of the State of Massachusetts; John P. Squire & Company Incorporated, a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Company, a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Company, a corporation organized and existing under the laws of the State of Maine.

MORRIS DEFENDANTS

Corporations

Morris Packing Company, a corporation organized and existing under the laws of the State of Maine; Morris & Company, a corporation organized and existing under the laws of the State of New Jersey; Morris & Company, a corporation organized and existing under the laws of the State of Louisiana; Morris and Company, of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania; Joseph Stern & Sons (Inc.), a corporation organized and existing under the laws of the State of New York; Brooklyn Beef & Provision Co., a corporation organized and existing under the laws of the State of New York; Condit Beef & Provision Company, a corporation organized and existing under the laws of the State of New Jersey; Corwin, Wilde Company, a corporation organized and existing under the laws of the State of Massachusetts; Donnelly & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; National Hotel Supply Company, a corporation organized and existing under the laws of the State of Illinois; Chamberlain & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; J. M. Wilson Company, a corporation organized and existing under the laws of the State of Massachusetts; Middletown Beef & Provision Company, a corporation organized and existing under the laws of the State of Massachusetts; Glenn & Anderson Co., a corporation organized and existing under the laws of the State of Illinois.

WILSON DEFENDANTS

Corporations

Wilson & Co., a corporation organized and existing under the laws of the State of New Jersey; Wilson & Co. (Inc.), a corporation organized and existing under the laws of the State of Nevada; Wilson & Co. (Inc.), of Louisiana, a corporation organized and existing under the laws of the State of Louisiana; Wilson & Co. (Inc.), of Oklahoma, a corporation organized and existing under the laws of the State of Oklahoma; South Dakota Provision Co., a corporation organized and existing under the laws of the State of South Dakota; Gotham Hotel Supply Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Standard Beef Co., a corporation organized and existing under the laws of the State of New York; Stiefel-O'Mara Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Drexel Packing Co., a corporation organized and existing under the laws of the State of Illinois; Albert Lea Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Mississippi Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Morton-Gregson Co., a corporation organized and existing under the laws of the State of Delaware; Paul O. Reymann Co., a corporation organized and existing under the laws of the State of West Virginia; Standard Provision Co., a corporation organized and existing under the laws of the State of New Jersey; Central Products Corporation, a corporation organized and existing under the laws of the State of Virginia.

CUDAHY DEFENDANTS

Corporations

Cudahy Packing Company of Nebraska, a corporation organized and existing under the laws of the State of Nebraska; Cudahy Packing Company of Alabama, a corporation organized and existing under the laws of the

State of Alabama; Cudahy Packing Company of Louisiana (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Nagle Packing Company, a corporation organized and existing under the laws of the State of New Jersey.

OTHER DEFENDANTS

Corporations

Western Meat Company, a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Company, a corporation organized and existing under the laws of the State of California; Nevada Packing Company, a corporation organized and existing under the laws of the State of Nevada.

These corporations are hereinafter referred to as the subsidiaries defendants.

ARMOUR DEFENDANTS

Individuals

J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, George B. Robbins.

SWIFT DEFENDANTS

Individuals

Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

MORRIS DEFENDANTS

Individuals

Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane, Harry A. Timmins.

WILSON DEFENDANTS

Individuals

Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burreil, James C. Good.

CUDAHY DEFENDANTS

Individuals

Edward A. Cudahy, Sr., Edward A. Cudahy, Jr., Guy C. Shephard, John E. Wagner, Andrew A. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

OTHER DEFENDANTS

Individuals

Fred L. Washburn.

These defendants are hereinafter referred to as the individual defendants.

COURT'S JURISDICTION

The parent companies, either directly or through subsidiaries, are engaged in interstate and foreign commerce in (a) the purchase and slaughter of live stock, (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter, (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal, (d) the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used, (e) the manufacture, canning, or otherwise preparing for the market, sale, and distribution of food supplies other than meats (these are hereafter referred to as substitutes for meat foods), (f) the manufacture and sale of various other articles commonly purchased and used either by the producer of

live stock, the companies transporting the live stock or dressed meats or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities).

By the unlawful means and methods hereinafter set out and complained of, the parent companies and the subsidiaries, defendants, acting by and through their principal officers, who have been made defendants herein, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities herein referred to, and which are necessary to the life, health, and welfare of the people of the United States. And by the same or similar methods the said parent companies and the subsidiaries defendants are attempting to increase and extend said monopoly, and are enabled thereby and do artificially control the supply and the price of the food supplies of the Nation.

The Government in instituting this proceeding invokes the general equity powers of this court in addition to the authority conferred upon it and contained in the act of Congress dated July 2, 1890, and entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", said act being commonly known as the Sherman antitrust law, and further conferred and contained in acts amendatory thereof and supplemental or additional thereto, and particularly the act known as the Clayton Antitrust Act dated October 15, 1914, being entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," which said acts by special provisions give to this court jurisdiction in all such matters as are set out in the following petition.

OBJECT TO BE ATTAINED

This petition is filed and these proceedings are instituted to put an end to any and all monopolies which the defendants may have created or obtained in the interstate trade or commerce of live stock, meat products, and substitute foods, and to prevent the continuance of

unlawful monopolies by the defendants, in the aforesaid trade or commerce in the products and commodities so described, and to deprive said defendants of certain instrumentalities, facilities, and advantages by which they have been enabled heretofore to more effectively perfect their attempts to monopolize; to compel the defendants to desist from dealing in certain of the substitute foods, and certain of the unrelated commodities; to limit in the manner hereinafter set forth, the interests which the individual defendants may have in corporations handling certain substitute foods and unrelated commodities; and to dissolve any and all contracts, combinations, and conspiracies in restraint of trade or commerce between the several States, which contracts, combinations, or conspiracies are more fully hereinafter described and to prevent said defendants from maintaining said contracts, combinations, or conspiracies with each other, or from entering into further contracts, combinations, or conspiracies with each other or with other persons.

THE NATURE OF THE BUSINESS AND METHOD BY WHICH IT IS CONDUCTED

The principal business of each of the parent companies, conducted by each company directly or through its subsidiaries, is the slaughter of live stock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses, and the distribution of the dressed meat in interstate commerce through various means by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers.

Each of these concerns is the successor or natural outgrowth of concerns of many years' standing. In their inception these concerns devoted themselves exclusively to the slaughter of live stock, the dressing of the carcass, and the sale of the dressed meat to retail butchers or consumers. The invention of what are known as route cars and refrigerator cars, by means of which the dressed meats might be hauled long distances and preserved for a considerable length of time, free from decay, enabled the parent companies to widely extend their market so

as to make it nationwide, and further enabled them to slaughter the live stock near the source of supply.

As the demand for live stock grew in volume the institution known as the stockyard was evolved.

THE STOCKYARDS

The stockyard was and is in theory a public market place to which all who wish to either buy or sell may have free access and right to trade. The stockyards afford to the cattle raiser the opportunity to dispose of his live stock for an immediate cash price. Contiguous to such stockyards commission men, dealing exclusively in the sale of live stock, locate themselves. These commission men attend to the care of the live stock upon its arrival, effect the sale of the stock so consigned, attend to its weighing, collect the proceeds of the sale and remit to the consignor after deducting customary commission.

Stockyards render certain services to the shipper, for which they make charge, to wit, yardage (furnishing the facilities and performing the services of placing and keeping the animals in pens and watering them), feeding and selling food, weighing, dipping, bedding cars, and often loading and reloading.

The yardage charges are ordinarily based upon an arbitrary price per head for each kind of stock, but in some instances they are based upon the hundredweight. The charge for feed is fixed by the stockyards and includes the services rendered in feeding. The amount of the charges made or to be made for the other items of services or materials furnished is also fixed by the stockyards or those who are in control of the yards.

In connection with each stockyard there is need for certain facilities and conveniences for the benefit of either the shipper or the buyer of the live stock. The stockyards, by reason of its dominating position, control these conveniences and facilities.

CONVENIENCES AND FACILITIES CONTROLLED BY STOCKYARDS

Packing House Sites

In furtherance of the tendency to centralize the market, it became of advantage to establish the slaughterhouses and packing plants either in, or immediately adjacent to, the stockyards. The stockyard companies generally own or control all the available land within the yards, and at most of the important yards the land surrounding the yards is owned by companies controlled by the stockyard company or its principal stockholders. New packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from these land-development companies. The owners of stockyard companies are, therefore, in a position to determine what packing companies and how many plants shall be established at the yards.

SITES FOR STOCKYARD BANKS AND CATTLE LOAN COMPANIES

The cattle raiser is in many instances dependent upon banks or loan companies to finance him in the rearing of his live stock and until such times as the stock shall have been sold. From the nature of the business it is a great advantage to these banks to locate in or near stockyards. It, therefore, lies within the power of the owner of the stockyard companies to designate how many and which banks or loan companies may establish themselves at the yards.

RENDERING PLANTS

While in transit or after reaching the yards, live stock often die either from disease or accident. The stockyard companies, by virtue of their agreement with the commission men, are permitted to determine who shall buy the dead animals and the price which shall be paid therefor. This monopoly power has generally resulted in the establishment of only one dead rendering plant at each of the important yards.

COMMISSION MEN'S OFFICE SPACE

The commission men and traders at the stockyards must have offices in or near the yards. They can get such accommodations only from renting or leasing from the stockyard companies. For the purpose of furnishing such office space each yard has a large building or series of buildings in which offices are leased to the commission men. The commission men are alloted pens, and inasmuch as it of great advantage to commission men to be able to dispose of his customer's live stock at the earliest possible hour, location of pens most favorable to the prospective buyer is of great advantage.

TERMINAL RAILWAYS

The centralization of the market at one site and the resultant growth of the packing houses in or about the market, of necessity, require terminal railways to facilitate the switching of cars from the railroads to the stockyards, from the yards to the packing plants, and from the packing plants to the railroads. These terminal or stockyard railways are usually owned by the stockyard companies or by those in control of the stockyard companies. Control of these railway carries with it the power to grant or withhold sidings, spurs, or other accommodations which may be required by the packing house, and those in control of said terminal railways are thereby in a position to discriminate against other packers or independent buyers by practicing delay in loading the animals bought by said packers or independent buyers and in switching the loaded cars to the connecting lines.

MARKET PAPERS AND JOURNALS

In addition to having a free market in which to dispose of his live stock, the cattle raiser requires full, accurate and unbiased reports of the demand for live stock, the prices prevailing, and the character and kind of stock required, together with such other information as to market or trade conditions. The cattle raiser, of necessity, is located at places remote from the market, he rarely

accompanies his shipment to the market, and by reason of the cost of shipment and of feeding in transit and while being held for sale it is imperative that he dispose of his stock when once he has shipped. For his guidance the cattle raiser relies largely upon the trade papers and journals. Control of these papers and journals furnishes a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer.

It is, therefore, evident that control of the stockyards and of the other facilities appertaining to the stockyards carries with it:

(a) A profit derived from the meat industry levied upon it and collected before the animal is slaughtered, all of which profit, however, evidences itself in the ultimate cost which the consuming public must pay for the dressed meat.

(b) A potential means of favoritism in dealing with commission men and of influence over them, a power to grant monopolies—carrying with it consequent profit—to banks, cattle-loan institutions, rendering plants, to concerns supplying food for live stock, and to others.

(c) A means to prevent the establishment of new packing plants and to hamper the growth of those in existence.

(d) A means to prevent the development and limit the number of new markets and to centralize and restrict business to the stockyards so controlled.

(e) Peculiar and exclusive access to information concerning the receipts and sale of live stock, its disposition, and the dissemination of information to the producer.

BRANCH HOUSES, ROUTE CARS, AUTOTRUCKS, AND COLD-STORAGE WAREHOUSES

Branch Houses

The primary means adopted by the parent companies in the distribution of their dressed meats are the branch houses. These houses are storage stations located in the cities and larger towns. They are equipped with facilities for cooling and preserving meats, and each is under

the charge of a branch house manager, under whose direction the branch house sales organization sells to retail and wholesale butchers, to purveyors, hotels, restaurants, and other similar large consumers. The parent companies maintain 1,120 branch houses in various large towns and cities throughout the United States, as against which all other interstate slaughterers, independent of the parent companies, maintain only 139.

Route Cars

The route cars supplement the branch houses. They serve the purpose of reaching these small communities where the trade is not sufficiently large to justify investment in a branch house. These route cars travel over what are known as car routes. Orders are taken in advance and the route cars reaching specified towns on specified dates serve the requirements of the smaller communities. The starting point for the route cars is usually the packing plant, though in some instances the route cars start from a branch house. The parent companies operated as of June, 1918, 1,297 route cars, which constituted 90 per cent of the total number operated in the packing industry. Said route cars reach and serve dealers in 37,176 towns, and operate in 37 of the States of the United States.

Autotrucks

This is a further development of the route-car plan. It had its origin in the development of the motor truck, and because of its freedom from railway limitations and schedules it is enabled to reach a wider radius and smaller towns than is the route car.

The autotrucks have been adopted primarily by Armour & Co. as a supplement to the car routes. These autotrucks reach and serve a total of 20,836 towns throughout the United States.

Cold-Storage Warehouses

The cold-storage warehouses were in the beginning adopted as an instrumentality for enabling the parent

companies to extend the volume of their slaughter of live stock and sale of dressed meat. In the first instance, they were used for chilling meat in connection with the packing business. Then they were constructed in connection with the branch houses, so that they might be used for storing and holding the finished meats until they were sold. Later they were either built or acquired in the large eastern seaboard cities for long-time storage and for storing for export. As will be more fully set forth hereafter in discussing the control of substitute foods, these storage warehouses were later employed to store nonmeat-food products. Later control was acquired over public storage warehouses where surplus space was leased or let to others. Later it will be pointed out how control of this public-storage warehouse was employed to aid in control of the price of meats and substitute foods.

THE PARENT COMPANIES' ACQUISITION OF ABOVE-NAMED DESCRIBED FACILITIES AND THEIR PURPOSE IN DOING SO

The parent companies and their controlling heads, appreciating the advantages which were to be gained by controlling the stockyards and the facilities pertaining thereto, the terminal railways and market papers and trade journals, and realizing that the requisition of such instrumentalities might thus enable them to obtain a primary profit not only out of the sale of live stock purchased and slaughtered by them but also on that purchased and slaughtered by their competitors, and realizing the opportunities thereby to repress and discourage the development of independent packers and slaughter houses and to control the shipments of meat to the various markets, set about the acquisition of the various stockyards and the appurtenances and privileges incidental thereto. This in many instances was done by a concert of action and pursuant to a common understanding. In most instances the acquisition of control of the aforesaid stockyards by any one or more of the parent companies was acquiesced in by the others and in all instances the ownership or control of stockyards by other packers or by any one in fact other than the parent companies or

one of their members or their controlling heads, was discouraged and opposed.

In pursuance of a common purpose, plan, and design, outside investors and independent packers have gradually been forced out as dominating factors both in the ownership and management of most of the important stockyards and have been replaced by the parent companies or their representatives. This acquisition has been accomplished by various methods: In the earlier years by exacting stock donations under threats of moving away their packing plants, later by cash subscriptions for stock, generally below par, and in other instances by voluntary reorganization of stockyard companies in order that the parent companies and their controlling heads might gain a controlling or dominating power in the yards and thus be induced to continue to maintain their packing plants thereat. By these various means the parent companies directly, or indirectly through their controlling heads, have been enabled to obtain control of substantially all of the large stockyards of the country. They now have, either jointly or separately, a controlling interest in 22 of the 50 market stockyards in the United States.

The parent companies have availed themselves of the control so acquired by them in the stockyards aforesaid to elect the officers and directors of said stockyards and to dominate and control the policies thereof. They have granted exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities and the location of cattle banks and cattle loan companies, hold the controlling stock, and they have otherwise, acting in concert, employed the powers and privileges more specifically set forth and discussed under the heading "Nature of the business and method by which it is conducted"; all of which has been done with the intent and purpose of, and has had the effect of discouraging and suppressing the establishment of independent packing establishments and dwarfing the growth of such independent packing companies as might then be in existence, and to enable said parent companies, their subsidiaries or the individuals who own and control the parent companies and their subsidiaries to obtain vast

profits from the management of the stockyard and the granting of the privileges appurtenant thereto, which profits are realized not only upon the live stock purchased by the packers but upon that purchased by their competitors. These methods have thus enabled them to enjoy and realize such profits without the same appearing or being disclosed in the profits of the parent companies; they have also furthered the attempt of said parent companies to monopolize the meat industry of the country and to artifically control the ultimate price which the consumer pays for meat and meat products.

Contracts in Restraint of Trade

The parent companies have entered into certain unlawful contracts and combinations to restrain trade and commerce and to artificially prevent between themselves competition in the prices for which meat and meat products are sold.

The most important of said contracts and agreements is what is known as the percentage purchase arrangement. This arrangement, though applied primarily in the purchase of live stock, had as its ultimate object the elimination of competition, not only in the purchase of live stock but also in the sale of dressed meats. It is a well-established commercial principle that a limitation upon the source of supply and the consequent limitation upon volume of business are the easiest means of removing all incentive to reduce prices.

The simplest way to limit the volume of dressed meat is to limit the purchase of live stock.

Recognizing these principles, the parent companies thereupon agreed upon and thereafter recognized between themselves certain percentages or proportions to which they deemed that each company was entitled, and they thereafter so gauged their purchases that annually their respective purchases approximated actually or substantially the percentages so agreed upon.

As a means of perfecting this arrangement, divers percentages varying at different stockyards were agreed upon, and understandings were had that certain of the parent companies should buy in certain yards or should

refrain from buying in certain stockyards. In order to prevent such plans from being disarranged by outside agreements were made with such outsiders by which purchases between the parent companies and the independents were effected upon a percentage basis similar to the above.

Means were adopted and by virtue of the parent companies, control over many of the stockyards were easily executed by which sales to outsiders or independents were controlled by the parent companies.

Control over the stockyards, the stockyards loan institutions, the terminal railways, and other privileges and prerequisites has discouraged any opposition by either commission men or independent packers.

Control of Substitute Foods

Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities intended primarily for the sale of meats were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

These attempts to monopolize have resulted in complete control in many instances of the substitute food lines.

They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table.

EXTENT TO WHICH THE MONOPOLISTIC ATTEMPTS HAVE BEEN SUCCESSFUL

Financial Growth, Present Net Worth, and Volume of Business

In the 15 years from 1904 to 1919, Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., according to their financial reports, grew from a net worth of approximately $92,000,000 to a net worth of approximately $479,000,000, and in this same period they paid in cash dividends $105,000,000. Only $89,000,000 of their increased worth represented new capital. Though always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profits for 1917 have equaled nearly the amount of their total net worth in 1904. Sales in 15 years have increased until for the fiscal year 1918 they reached the vast sum of $3,200,000,000. This was realized from meats, substitute foods, and unrelated lines, as hereinabove set forth. In stating these figures account has been taken only of the profits and sales of the parent companies and subsidiaries included by them upon their books. No account has been taken of the many corporations which are owned or controlled by the same family or financial interest as own or control the parent companies.

In addition to these profits there have been other vast profits, difficult of ascertainment, realized by the individuals by virtue of either their personal control of other packing houses and slaughtering companies or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks, and other corporations, all of which corporations have their inception

and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyard and stockyard appurtenances.

Number of Controlled Companies

The parent companies or the individual defendants and their families maintain and control 574 corporations or concerns, including 131 trade names. They have a significant minority stock interest in 95 others and an interest of unknown extent in an additional 93. Thus the total number of concerns in which they have control or interest in some 672. In the years that are past the parent companies have acquired or organized many other concerns and have maintained them so long as they were useful for their purposes. When no longer useful those concerns, so acquired or organized, have been dissolved and their businesses have been merged into that of the parent companies or that of other subsidiaries. Such dissolved corporations and concerns are omitted in the above compilation except in those instances where their names have been continued as trade names. The total of 762 above stated, therefore, falls far short of representing the number of concerns that corporate and individual defendants have acquired or have organized in furtherance of the general scheme and plan of action already explained.

Extent of Industrial Control in the Substitute Foods and Unrelated Commodities

It would be an enormous undertaking to determine the degree of control exercised by the defendants in all of these various industries. Enough has been ascertained to indicate that the growth has been rapid and that if permitted to continue unchecked, in a matter of a few years the control will be complete.

In 1916 the business of Armour & Company in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies) and grape juice amounted to $6,396,036.73; in 1918, two years later, the same company's volume of business in these same items was $39,820,000, over a sixfold increase. While part of

this increase of business may be attributed to the increase of population and the consequent increase of consumption, the greater part thereof was acquired at the expense of competitors. Of the corporations which have been acquired by the parent companies in recent years, a large number are concerns manufacturing or selling these substitute foods or unrelated commodities. This fact, together with the increased activities of the parent organizations, themselves, in these lines indicates a well-defined purpose on their part to secure control of the market for meat-substitute foods. In addition to the companies whose control has been acquired by outright purchase, the parent companies have, in a large number of instances, contracted for the exclusive output of many other companies engaged in the production of the substitute foods and the unrelated commodities. The outputs of these plants are marketed by the parent companies or by their subsidiaries through the distribution facilities of the parent companies. In this fashion the parent companies control the output of these concerns and the market price of their products as compeltely as though they themselves owned the producing companies.

Individual Defendants

The individual defendants are either officers, directors, agents, or employees of the parent companies or their subsidiaries or large stockholders of parent companies and subsidiaries who are otherwise affiliated in commercial operations with the active heads of the parent companies. These individual defendants are in their individual capacity financially interested to a great extent in the stockyards, terminal railways, cattle loan banks, rendering companies, and other institutions interrelated with the stockyards. They, or some of them, control the corporations dealing in the substitute foods and the unrelated commodities. In many instances, in addition to their individual holdings, they hold stock in these corporations for the benefit of the parent companies. The control by these individuals of the facilities or instrumentalities of the meat business and their interest in concerns dealing in the substitute foods and the unrelated cmmodities enable the parent companies to carry

out the purpose of the combinations hereinabove described, and are now and will continue to be a sinister and ever-present means of furthering the attempt to monopolize and perfect it to such a degree that the parent companies or their subsidiaries will have complete control not only of meat products but of all substitute foods consumed in the United States.

Subsidiaries Defendants

These comprise many, but not all, of the subsidiaries owned or controlled by the parent companies. Only these subsidiaries, which are substantially 100 per cent parent-company owned and which are engaged either in the slaughtering, packing, or selling of meats, have been made parties defendants. It is the plan and scheme of this petition and the prayer for relief that the corporations which in themselves own the facilities more specifically described above or deal in the substitute foods and unrelated commodities shall not be made parties defendants in the first instance or until it appears that they are necessary parties defendants, but that the parent companies, the subsidiary defendants, and the individuals should be compelled to divest themselves of all interest in or connection with the subsidiaries owning the facilities or dealing in the substitute foods or commodities referred to.

Prayer

Wherefore, petitioner prays.

I. That the defendants, and each of them, be forever enjoined from continuing any contract, combination, or conspiracy in restraint of trade or commerce in the purchase of live stock, or the purchase, sale, or distribution of dressed meats or other products or commodities now handled by them, or any of them, among the several States or foreign nations, which contract, combination, or conspiracy may now exist between them, or any two or more of them, or from doing any act pursuant to or in furtherance of any such contract, combination, or conspiracy, and that they be enjoined from entering into any other or further contract, combination or conspiracy, either among themselves or among any two or more of

them, or with any other person or persons whatsoever, in restraint of trade or commerce between the several States and foreign nations.

II. That they, and each of them, be enjoined and forever restrained from monopolizing, or attempting to monopolize, or conspiring to monopolize, the trade or commerce between the several States or with foreign States in the purchase, sale or distribution of live stock or the commodities aforesaid.

III. That the defendants, and each of them, be required to divest themselves to such extent and upon such terms and conditions as the court may deem proper from such interest in or control over public cold-storage warehouse, retail meat markets, stockyards, terminal railways, market or trade journals, or such other facilities as are connected with or are appurtenances to the stockyards, in such instances as the court may deem that such instrumentalities constitute a means of facilitating the formation or continuance of monopolies in the purchase of live stock or the sale of the commodities aforesaid.

IV. That the corporation defendants, and each of them, be perpetually enjoined from permitting their refrigerator cars, route cars, auto trucks, or branch houses, or other distributive facilities, to be used for the distribution or sale of commodities of the character and kind hereinbefore generally described as substitute foods and unrelated commodities in such instances and to such extent as the court may deem necessary for the purpose of preventing the aforesaid defendants from acquiring a monopolistic control over the trade or commerce in such commodities, or a control which may enable them to restrain the trade or commerce or artificially affect the price of any commodities in which the aforesaid defendants now deal.

V. That the defendants and each of them be required to divest themselves of all stockholdings or other interests in any corporation, partnership, or association now dealing in any of the food substitutes or unrelated commodities hereinbefore more specifically described, and that wherever said defendants own, operate, or control a department buying, selling, or otherwise distributing substitute foods, unrelated commodities, or any of them,

that they be required to discontinue the aforesaid department, and that the defendants and each of them be restrained and perpetually enjoined from hereafter acquiring any stockholdings or interests of the character hereinbefore described, in any corporation dealing exclusively or partially in the said substitute foods or commodities hereinbefore referred to, or from themselves engaging in such business, either directly or through a department.

VI. That the defendants and each and every one of them be perpetually enjoined from indulging in any unlawful practice or committing any act of unfair competition or any other act with the purpose of or which may have the effect of unduly restraining trade and commerce, or which may be indulged in or done with the purpose or effect of monopolizing said trade or commerce in the commodities now manufactured, bought, sold, or otherwise dealt in by the defendants or any one of them.

VII. That your petitioner be granted such other and further relief as the nature of the case may require and the court may deem just and proper in the premises.

To the end, therefore, that the United States may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant writs of subpoena directed to each and every one of said defendants, commanding them and each of them to appear herein and answer, but not under oath (answers under oath being hereby expressly waived), the allegations contained in the foregoing petition, and to abide by and perform such order or decree as the court may make in the premises, and upon final hearing hereof to permanently enjoin each of the defendants as hereinbefore prayed.

Respectfully submitted.

JOHN E. LASKEY,
United States Attorney.

A. MITCHELL PALMER,
Attorney General.

ISIDOR J. KRESEL,
JOHN H. ATWOOD,
JOSEPH SAPINSKY,
Special Assistants to the Attorney General.

IN THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA

No. 37623. Equity

[Caption Omitted in Printing]

DECREE AND CONSENTS

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto daily authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of

them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, job-

bing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Potatoes.
Navy beans.	Tomatoes.
Lima beans.	Celery.
Peas.	Garlic.
Beets.	Horse-radish.
Corn.	Pumpkins.
Okra.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Peaches.
Pineapple.
Raspberries.
Currants.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.
Prunes.
Raisins.
Dates.

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.
Chili sauce.
Cinnamon.
Cloves.
Mustard.
Mustard seed.
Olives.
Oyster cocktail sauce.
Pepper.
Pickles.
Spinace chili.
Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit: Almonds, pecans, walnuts. But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Grits.
Oats.
Hominy.
Hominy feed.
Horse feed.
Brewers' flakes.
Brewers' grit.
Brewers' meal.
Buckwheat.
Canned hominy.
Clipped oats.
Corn grits.
Ground meal.
Ground oats.
Ground corn.
Cracked corn.
Crushed white oats.
Feed barley.
Feed meal.
Feed wheat.
Rolled oats.
Standard middlings.
Standard spring brand.
Spaghetti.
Vermicelli.
Macaroni.
Corn flakes.
Wheat foods.

12. Grain.

13. Miscellaneous articles, to wit:

Cigars.
China.
Furniture.
Bluing starch.
Fence posts and wire fences.
Alfalfa meal.
Babbitt.
Bar iron.
Binding and twine.
Brass castings for heavy ordnance.
Brick.
Builders' hardware.
Bumping posts for railroads.
Cement, lime, plaster.
Doors and windows.
Dried brewers' grains.
Lath.
Pitting and fruit handling machinery.
Roofing.
Sand and gravel.
Shingles.
Soda fountains or parts thereof.
Structural steel.
Tile.
Waste.

14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and

restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50% or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following to wit:

Canned oysters.	Canned salmon.
Canned mackerel.	Canned sardines.
Bulk mackerel.	Canned shrimp.
Bulk, canned, and cured herring.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.
Navy beans.
Lima beans.
Peas.
Beets.
Corn.
Okra.
Potatoes.
Tomatoes.
Celery.
Garlic.
Horse radish.
Pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit:

Ginger.
Cherries.
Apple butter.
Apricots.
Blackberries.
Peaches.
Pineapple.
Raspberries.
Currants.
Figs.
Gooseberries.
Oranges.
Strawberries.
Apples.
Prunes.
Raisins.
Dates.

4. Confectionery, sirups, soda fountain supplies, and sirups and soft drinks, not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.
Cherry juice.
Coca Cola.
Creme de menthe.
Crushed nut frappe.
Ginger ale.
Green pineapple sirup.
Lemon extract.
Marshmallow topping.
Orange extract.
Root beer.
Vanilla extract.
Vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Olives.
Chili sauce.	Oyster cocktail sauce.
Cinnamon.	Pepper.
Cloves.	Pickles.
Mustard.	Spinace chilli.
Mustard seed.	Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following: to wit: Almonds, pecans, walnuts. But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: Provided, however, That nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat markets shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing or otherwise dealing in fresh

milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargarine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no de-

fendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads, and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interests which are to be disposed of by them as and to the extent required by this decree in firms, corporations,

and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard, shall as a part of said purchase, agree with such defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and

operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants or any of them in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transactions consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except

as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stock yard market companies, stock yard terminal railroads, stock yard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, trahsporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same

were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding to the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

WALTER I. McCOY,
Chief Justice.

FEBRUARY 27, 1920.

The defendants Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, and Fred L. Washburn, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

HENRY VEEDER,
Attorney for
above-named defendants.

Dated 27th day of February, 1920.

The defendants Wilson & Co., Inc. (N.Y.); Wilson & Co. (N.J.); Wilson & Co., Inc., of Calif. (Nev.); Wilson & Co., Inc., of Louisiana (La.); Wilson & Co., Inc., of Okla. (Okla.); South Dakota Provision Co., Gothan Hotel Supply Co., Inc.; Standard Beef Co.; Stiefel-O'Mera Co., Inc.; Drexel Packing Co.; Albert Lea Packing Co., Inc.; Mississippi Packing Co., Inc.; Morton-Gregson Co., Paul O. Reymann Co.; Standard Provision Co., Central Products Corporation, Thomas E. Wilson,

Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolphe E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good, appear herein generally by Jewel P. Lightfoot, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

JEWEL P. LIGHTFOOT,
Attorney for
above-named Defendants.

Dated Washington, February 27, 1920.

The defendants The Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska, Cudahy Packing Company of Alabama, Cudahy Packing Company of Louisiana, Ltd., Nagle Packing Company, Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, and George Marples, appear herein generally by Thomas Creigh, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in the cause without further notice.

THOMAS CREIGH,
Attorney for
above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Armour and Company (Ill.), Armour & Company (N.J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company, Ltd. (La.), The Anglo American Provision Company, The Colorado Packing and Provision Company, Fowler Packing Company, Hammond Packing Company, The New York Butchers Dressed Meat Company, Atlantic Hotel Supply

Company, Inc., J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, appear herein generally by Charles J. Faulkner, Jr., their attorney and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

CHARLES J. FAULKNER, JR.,
Attorney for
above-named Defendants.

Dated Washington, February 27, 1920.

The defendants Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N.J.), Morris & Company (La.), Morris & Company of Pennsylvania (Pa.), Joseph Stern & Sons, Inc., Brooklyn Beef & Provision Co., Condit Beef and Provision Company, Corwin, Wilde Company, Donnelly & Company, Inc., National Hotel Supply Company, Camberlain & Company, Inc., J. M. Wilson Company, Middletown Beef and Provision Company, Glenn & Anderson Co., Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane and H. A. Timmins, appear herein generally by M. W. Borders, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

M. W. BORDERS,
Attorney for above-
mentioned Defendants.

Dated Washington, February 27, 1920.

The defendants Swift and Company (Ill.), Swift and Company, (W. Va.), Swift and Company, Inc. (Ky.),

Swift and Company, Ltd. (La.), Swift and Company (Me.), Swift Beef Company, (Me.), United Dressed Beef Co. of New York, J. J. Harrington and Company, Inc., Bimbler Company, The G. H. Hammond Company, Omaha Packing Company, Plankinton Packing Company, Sturtevant & Haley Beef & Supply Company, E. K. Pond Packing Company, Van Wagenen and Schickhaus Company, Western Packing Company, Hammond Beef Company, Omaha Meat Company, A. Canfield Commission Company, H. C. Derby Company, Metropolitan Hotel Supply Company, Vermont Supply Company, The Hotchkiss Beef Co., New England Dressed Meat & Wool Company, North Packing & Provision Company, The Sperry & Barnes Company, John P. Squire & Company (Me.), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R.I.), Springfield Provision Company, White, Pevey, and Dexter Company, Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, Jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, and William B. Traynor, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

HENRY VEEDER,
Attorney for the
above-named Defendants.

Dated Washington, February 27, 1920.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil No. 58 C 613

UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT AND COMPANY, ET AL., DEFENDANTS

PETITION FOR INJUNCTION

The United States of America, by its attorneys, brings this petition against General Host Corporation (hereinafter "General Host") and alleges as follows:

I.

Jurisdiction and Venue

1. This petition is filed in order to prevent and restrain violation of the Decree entered by the Supreme Court of the District of Columbia on February 27, 1920 in Equity Cause No. 37623, which cause was transferred to this Court by order dated January 15, 1958.

2. General Host is a New York corporation doing business in the State of New York.

II.

Trade and Commerce

3. The Decree entered in this cause on February 27, 1920 perpetually enjoins and restrains Armour and Company (hereinafter "Armour") from manufacturing, jobbing, selling, transporting (except as common carriers), distributing or otherwise dealing in any of the products or commodities listed therein, including bread, flour, sugar, fresh milk and cream, and many other food products customarily found in food stores and restaurants.

4. General Host, through its divisions and wholly-owned subsidiaries, is engaged in the business of manu-

facturing, jobbing, selling, distributing, or otherwise dealing in products or commodities listed in the Decree as follows:

a. Bond Baking Company and Eddy Bakeries Company produce and distribute bakery products;

b. Van de Kamp's produces baked goods, processes frozen convenience foods, and operates coffee shops, restaurants, and bake shops;

c. Yellowstone Park Company and Everglades Park Company, Inc., operate inns, lodges, restaurants, and other facilities in Yellowstone National Park and Everglades National Park, respectively;

d. Vernell's makes and sells candy and crackers;

e. Li'l General Stores operates approximately 380 convenience stores, the principal sales of which include cold beverages, dairy products, and bread.

III.

Offense Charged

5. Since sometime in August 1968 General Host has initiated and pursued a plan to acquire control of Armour by purchasing shares of the common stock of Armour.

6. General Host now holds 1,002,500 shares of the common stock of Armour, representing approximately 16.5% of Armour's outstanding common stock.

7. On January 20, 1969, the shareholders of General Host authorized an exchange offer to be made to the holders of the common stock of Armour.

8. General Host has stated that it may accept all shares of Armour common stock tendered pursuant to the exchange offer.

9. Control of Armour by General Host is imminent.

10. Control of Armour by General Host will result in violation of the Decree entered in this cause on February 27, 1920, by causing Armour to be engaged in activities prohibited to it by the Decree.

IV.

Prayer

WHEREFORE Petitioner prays:

11. That pursuant to Section 5 of the Act of Congress of July 2, 1890 (15 U.S.C. § 5), commonly known as the Sherman Act, the Court order summons to be issued commanding General Host to appear and answer the allegations contained in this petition.

12. That a temporary restraining order be issued enjoining and restraining General Host from directly or indirectly acquiring or taking any action to acquire additional shares of stock in Armour, pending a hearing before this Court;

13. That an injunction be issued enjoining and restraining General Host from directly or indirectly acquiring or taking any action to acquire additional shares of stock in Armour and from taking any action to exercise control over or to influence the business affairs of Armour, as long as General Host is engaged in businesses dealing in products listed in the Decree of February 27, 1920.

14. That petitioner have such other and further relief as the nature of this case may require and the Court may deem proper in the premises; and

15. That the petitioner recover its costs.

Dated: January 20, 1969

/s/ Edna Lingreen
EDNA LINGREEN

/s/ Peter H. Goldberg
PETER H. GOLDBERG

Attorneys, Department of Justice
2634 United States Court House
219 South Dearborn Street
Chicago, Illinois 60604
Telephone: 353-7538

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

AFFIDAVIT IN SUPPORT OF GOVERNMENT'S PETITION FOR AN INJUNCTION

CITY OF WASHINGTON)
) ss
DISTRICT OF COLUMBIA)

EDNA LINGREEN, being duly sworn, deposes and says:

I am an attorney in the United States Department of Justice and am familiar with the subject matter of this petition. I submit this affidavit in support of the Government's petition to enjoin General Host Corporation (hereinafter "General Host") from taking action which will result in violation of the decree entered in *United States v. Swift and Company, et al.*, Equity No. 37623, on February 27, 1920 by the Supreme Court of the District of Columbia.

The petition filed today alleges that General Host has initiated and pursued a plan to acquire control of Armour and Company (hereinafter "Armour") which, if successful, will result in violation of the Decree entered in this cause on February 27, 1920, which perpetually enjoins and restrains Armour from dealing in products or commodities listed therein. The petition alleges that General Host is engaged in businesses dealing in certain of those products or commodities; that it has already acquired 16.5% of the outstanding shares of common stock of Armour; that it will presently make an offer to acquire the common stock of Armour; that control of Armour by General Host is imminent; and that control of Armour by General Host will result in violation of the Decree by causing Armour to be engaged in activities prohibited by the Decree.

The petition prays that General Host be enjoined and restrained from acquiring additional shares of stock in Armour and from taking any action to exercise control over or to influence the business affairs of Armour.

This affidavit is based on information furnished the Department of Justice by General Host and from public sources.

1. Paragraph Fourth of the Decree entered on February 27, 1920, in Equity No. 37623, *United States* v. *Swift and Company, et al.*, perpetually enjoins and restrains the corporate defendants, including Armour, from engaging in or carrying on "the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in" the following products and commodities, among others:

> Canned fish including herring, salmon, sardines, shrimp and tuna fish.
>
> Fresh, dried, or canned vegetables including asparagus, navy and lima beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horse-radish, and pumpkin.
>
> Fresh, crushed, dried, evaporated, or canned fruits including the following: cherries, apricots, peaches, oranges, strawberries, apples, prunes, raisins, and dates.
>
> Soft drinks including: apple cider, Coca-cola, ginger ale, root beer, and vanilla, orange, and lemon extract.
>
> Molasses, honey, jams, jellies, and preserves of all kinds.
>
> Spices, relishes, and sauces including catsup, cinnamon, mustard, olives, peppers, and pickles.
>
> Coffee, tea, chocolate, and cocoa.
>
> Almonds, pecans, and walnuts, but not including peanuts.
>
> Flour, sugar, and rice.
>
> Bread, wafers, crackers, and biscuits.
>
> Cereals including grits, oats, buckwheat, cornflakes, and 24 other items.
>
> Grain.

Miscellaneous articles, including cigars and starch.
Grape juice.

Paragraph Fourth further perpetually enjoins and restrains Armour from owning any capital stock or other interest in any concern which deals in any way in any of the above products.

2. Armour is also perpetually enjoined, by Paragraph Sixth, from operating or conducting any retail meat markets, unless operated for the accommodation of its own employees; and, by Paragraph Eighth, from dealing in, or owning any interest in a corporation which deals in, fresh milk and cream.

3. General Host Corporation was incorporated as General Baking Company under the laws of the State of New York in 1911. The present name was adopted in April, 1967. In 1967 it had total sales in excess of $155,241,000 and total assets of $62,154,000. Three of the company's divisions manufacture and sell complete lines of baked goods, another division makes and sells candy, and another operates convenience food stores. Through two wholly-owned subsidiaries, the company operates restaurants and other facilities in two national parks. All of these operations involve manufacturing, selling, distributing, or otherwise dealing in many of the products which the Decree forbids to Armour.

4. Bond Baking Company, Eddy Bakeries Company, and Van de Kamp's divisions of General Host manufacture and sell a complete line of baked goods, including bread, rolls, cakes, pies, sweet goods, cookies, doughnuts, and miscellaneous bakery products. Bond and Eddy products are sold principally at wholesale. Van de Kamp's products are distributed primarily through retail installations in supermarkets. In addition to bakery goods, Van de Kamp's also processes and sells frozen food specialty items and operates coffee shops and restaurants. Vernell's makes and sells candy and crackers.

5. Li'l General Stores division operates 380 convenience food stores. These are small, self-service markets primarily handling rapid turnover items needed by housewives between major trips to supermarkets. Principal

sales include cold beverages, dairy products, and bread. This division also operates some drive-in dairy stores in Florida and engages in wholesale produce distribution on the west coast of Florida.

6. The wholly-owned subsidiaries are Yellowstone Park Company and Everglades Park Co., Inc. These companies operate under long-term concession contracts with the U. S. National Park Service. Yellowstone Park Company operates hotels, inns, lodges, restaurants, and other facilities in Yellowstone National Park, Wyoming. Its restaurant facilities have a total seating capacity of 2,867 persons. Everglades Park Co., Inc., operates overnight accommodations and food, beverage, and other facilities in Everglades National Park in Florida. Its restaurant facilities have a maximum seating capacity for 265 persons.

7. General Host's Frontier West division owns land in the West, which it intends to develop as a tourism project; completed facilities at one of its locations in Arizona include a restaurant. Frontier West also operates a restaurant in New Mexico. General Host has agreed to acquire Utah Parks Company, which operates hotels, inns, lodges, restaurants, and other facilities in three national parks in the region of the Arizona-Utah border.

8. General Host is engaged in a program to acquire control of Armour. In August 1968 it purchased from Gulf & Western Industries, Inc., 150,000 shares of common stock of Armour held by Gulf & Western and obtained an option to purchase an additional 600,000 shares of Armour stock from Gulf & Western. It exercised this option on October 15, 1968. Since that date it has purchased additional Armour stock on the open market. It now holds 1,002,500 shares and is the largest single holder of Armour common stock.

9. General Host's holdings constitute approximately 16.5% of the total shares of Armour common stock outstanding. Armour management interests directly or indirectly own approximately 10%.

10. On January 20, 1969, General Host's shareholders authorized an exchange offer to the holders of the com-

mon stock of Armour. Pursuant to that offer General Host may accept all shares of Armour common stock tendered to it.

11. The annual meeting of shareholders of Armour is scheduled for February 21, 1969.

EDNA LINGREEN

Page #1

DOCKETED

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable JULIUS J. HOFFMAN

Cause No. 58 C 623 Date Jan. 21, 1969

Title of Cause U.S. v Swift and Company et al

Brief Statement of Motion Petition for Injunction against General Host Corporation

Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel Edna Lingreen, Peter Goldberg } Representing U.S.

Representing 2634 U.S. Court House
219 South Dearborn St.
Chicago Ill. 60604

Names and Addresses of other counsel entitled to notice and names of parties they represent

John T. Chadwell Rep Swift and Company
135 South LaSalle St.

Samuel Block Rep General Host
135 South LaSalle St.

Leslie Hudson Rep Armour and Company
Room 2900 Prudential Plaza

Reserve space below for notations by minute clerk

Lewis Simpson Rep Wilson and Company
Room 2300 Prudential Plaza

Judge Hoffman

JAN 23 1969

Original Heard
The Court rules on the Petition of the Govt. for injunction against General Host Corp. Leave to General Host Corp to file such Memoranda as it and its counsel may deem appropriate within 5 days etc. see Page #2

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

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Page #2

DOCKETED

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable JULIUS J. HOFFMAN

Cause No. 58C613 Date 1-21-69

Title of Cause U. S. A. vs Swift & Co. et al.

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

reserving the right that in the right in General Host Corp. not to file anything if it concludes not to do so. General Host Corp. for 5 days to prepare & submit proposed findings of fact, proposed Conclusions of Law and proposed Judgment Orders, reflecting the Court's views in its ruling

Reserve space below for notations by minute clerk

Judge J. Hoffman

JAN 23 1969

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

RESPONSE TO PETITION FOR INJUNCTION

General Host Corporation (hereinafter "General Host"), by its attorney, responds to the Petition for Injunction filed by the United States of America as follows:

1. General Host admits the allegations of Paragraph 1 of the Petition that the Petition purports to be filed to prevent and restrain a violation of the Decree entered by the Supreme Court of the District of Columbia on February 27, 1920 in Equity Cause No. 37623, which cause was transferred to this Court by order dated January 15, 1958 but avers that it is not and was not a defendant in that action, has never been heard with respect to the complaint therein, did not consent to the entry of the "Decree and Consents" issued therein and is not a party bound by said Decree nor in active concert or participation with a party bound by said Decree.

2. General Host admits the allegations of Paragraph 2 of the Petition.

3. General Host admits the allegations of Paragraph 3 of the Petition.

4. With respect to Paragraph 4 of the Petition, General Host admits that its divisions and wholly-owned subsidiaries are engaged in the business activities alleged in Paragraph 4 (a) through (e), but denies that such activities, products and commodities are listed in the Decree.

5. General Host denies the allegations of Paragraph 5 of the Petition and avers that its present stockholdings in Armour were purchased as an investment; that on or about December 10, 1968, General Host's officers decided to make an offer to acquire additional shares of Armour common stock; and on January 14, 1969 decided

to reserve the right to reject all tendered stock if as a result of the tender General Host would own less than 50 per cent of the common stock of Armour. That plan was approved on January 20, 1969 by General Host's stockholders and a Prospectus is being prepared for distribution to Armour's shareholders.

6. General Host admits the allegations of Paragraph 6 of the Petition.

7. General Host admits the allegations of Paragraph 7 of the Petition.

8. General Host admits the allegations of Paragraph 8 of the Petition.

9. General Host denies the allegations of Paragraph 9 of the Petition.

10. General Host denies the allegations of Paragraph 10 of the Petition.

First Affirmative Defense

11. The Petition fails to state a claim for relief against General Host:

(a) General Host was not a party to the litigation which resulted in the Final Decree entered February 27, 1920 on consent of the then defendants.

(b) General Host is not an officer, agent, servant, employee or attorney of any of the defendants in said action.

(c) General Host is not in active concert with any of the defendants in said action. Defendant Armour has actively opposed General Host's acquisition of a controlling interest in its stock.

(d) General Host's acquisition of a controlling stock interest in defendant Armour is not prohibited by the Consent Decree.

Second Affirmative Defense

12. The petitioner is not entitled to a temporary restraining order:

(a) The Petition is prematurely brought since General Host has not yet made its tender offer and

it cannot now be determined whether said tender offer will result in General Host's obtaining controlling stock interest in defendant Armour.

(b) There will be no immediate and irreparable loss or damage to the petitioner if the tender offer is allowed to proceed.

Third Affirmative Defense

13. Petitioner is not entitled to a preliminary injunction.

Fourth Affirmative Defense

14. Before any relief may be granted against it General Host is entitled to a full trial on the merits.

Dated: January 20, 1969

ALBERT E. JENNER, JR.

SAMUEL W. BLOCK
RAYMOND, MAYER, JENNER & BLOCK
135 South LaSalle Street
Chicago, Illinois 60603
Telephone: RA 6-0220

Attorneys for General Host Corporation

Of Counsel

BERGSON, BORKLAND, MARGOLIS & ADLER
888 Seventeenth St., N.W.
Washington, D.C. 20006

LOVEJOY, WASSON, LUNDGREN & ASHTON
250 Park Avenue
New York, N. Y. 10017

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

AFFIDAVIT OF HARRIS J. ASHTON IN OPPOSITION TO GOVERNMENT'S PETITION FOR AN INJUNCTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HARRIS J. ASHTON, being duly sworn, deposes and says:

1. I am President of General Host Corporation (hereinafter referred to as "General Host"), 245 Park Avenue, New York City, the subject of the pending petition herein.

2. I make this affidavit in opposition to the motions by the Government for a temporary restraining order and an injunction enjoining General Host from commencing its proposed exchange offer for shares of common stock of Armour and Company (hereinafter referred to as "Armour") and enjoining General Host from the acquisition of any additional shares of Armour's common stock by any other means. The Government alleges that General Host's proposed exchange offer would violate the terms of the Final Decree herein entered on consent against Armour and the other defendants on February 27, 1920 (hereinafter referred to as "Packers' Consent Decree"). General Host was not a party to this Packers' Consent Decree nor has General Host ever been a party to this proceeding at any time either prior to entry of the Decree or during the forty-nine years subsequent thereto.

3. General Host made its initial purchase of 150,000 shares of Armour common stock from Gulf & Western Industries, Inc. in August, 1968. In October, 1968 General Host purchased Gulf & Western's remaining interest consisting of 600,000 shares of Armour common stock. During November, 1968 General Host purchased addi-

tional Armour stock on the open market, and as of December 2, 1968, General Host owned 1,002,500 shares of Armour common stock, aggregating approximately 16.5% of the total issued and outstanding shares. General Host has made no purchases of additional Armour stock, directly or indirectly, since December 2, 1968.

4. General Host intends to make its exchange offer to holders of Armour common stock in the hope of acquiring a controlling stock interest in Armour. General Host is interested in acquiring a controlling stock interest in Armour because it believes that Armour can become considerably more profitable for its stockholders than it has been during the past several years.

5. Not only is it clear that General Host is not a party to the Packers' Consent Decree, but it is equally clear that in making its proposed exchange offer to Armour common stockholders, General Host is not acting in concert with Armour's present management. Instead, it is acting contrary to its expressed wishes. Mr. William Wood Prince Armour's Chairman and Chief Executive Officer, has openly and publicly opposed any attempt by General Host to obtain a controlling stock interest in Armour and has mounted an extensive publicity campaign against General Host's exchange offer. Full page advertisements of a letter by Mr. Prince to Armour stockholders opposing General Host's offer appeared in the *Wall Street Journal* on January 9, 1969 and in the *New York Times* on January 10, 1969. A copy of this advertisement from the *Wall Street Journal* is attached hereto as Exhibit A. I am informed and believe that in addition to the two newspapers mentioned, other newspapers across the country recently published Mr. Prince's advertisement.

6. Not only do the foregoing advertisements indicate the strength of Armour management's opposition to General Host, but other reports, such as the ones published in the *Wall Street Journal* on December 13, 1968 and on October 23, 1968 (copies of which are attached hereto as Exhibits B and C, respectively), have also made its opposition open and notorious. Armour's opposition to General Host, however, does not arise from any personal

contacts. I have never communicated in any way with Armour's management concerning the exchange offer. So far as I know, there have been no such communications by anyone else representing General Host, except requests to use Armour's financial statements as required by the Securities and Exchange Commission and requests for stockholder lists.

7. The Government's application for an order restraining General Host's proposed exchange offer should be denied at this time as premature. The Government alleges that control of Armour by General Host is prohibited by the Packers' Consent Decree and that such control is imminent. In fact, however, control of Armour by General Host is far from imminent and it may never occur. Although General Host is currently Armour's largest stockholder, its present holdings do not give it control of Armour and are sufficient only to enable it to obtain minority representation on Armour's Board of Directors. This point is explained in more detail later in this affidavit.

8. General Host has not purchased any additional stock in Armour since early December, 1968, and presently has no plans to increase its stockholders in Armour by any means other than the proposed exchange offer. Thus, General Host cannot and will not acquire a controlling stock interest in Armour unless and until General Host's exchange offer is accepted by a sufficient number of Armour's present stockholders. General Host believes that, because of the stockholdings and position of Armour's present management, nothing less than a majority of all of Armour's issued and outstanding common stock would enable General Host to exercise control of Armour.

9. If General Host's exchange offer is unsuccessful, that is, if the number of shares tendered is insufficient to bring General Host's total holdings up to a majority of Armour's stock, General Host will decline to accept any of the tendered shares. Thus, until the outcome of the exchange offer is known and unless the offer is successful, there can be no question of control of Armour by General Host. Therefore, there would appear to be no

question for this Court to decide until the result of the exchange offer is known, and General Host's decision is made. In this connection it should be emphasized that neither General Host nor anyone else can possibly know what the results of the exchange offer will be until the close or near the close of the period of the offer. General Host expects to commence the exchange offer late in January, 1969 and to continue it for two or three weeks. In comparable exchange offers, it is customary for most people to wait until the offer is almost due to expire before deciding whether to accept it. Thus, it will be after the middle of February, 1969 before anyone can know whether or not General Host will acquire any additional Armour stock.

10. Even if General Host acquires a controlling stock interest in Armour through its exchange offer, it does not appear possible under Armour's present Certificate of Incorporation and By-Laws, for General Host to elect a majority of Armour's directors at the 1969 Annual Meeting which is presently scheduled to be held February 21, 1969. It may not be possible for General Host to control Armour by electing a majority of its directors prior to the 1970 Annual Meeting.

11. Armour's Certificate of Incorporation and By-Laws (copies of which are attached hereto as Exhibits D and E, respectively) provide that the Board of Directors shall consist of seventeen persons divided into three classes. Each director has a three-year term of office. Six directors are due to be elected in 1969, five in 1970 and six in 1971. The Certificate and By-Laws also provide for cumulative voting for directors. Assuming that all of the 6,095,000 presently outstanding shares are voted, the following number of shares are needed to elect the following number of directors in 1969:

Number of Directors	*Shares Needed*
1	864,259
2	1,728,513
3	2,592,769
4	3,457,024
5	4,321,280
6	5,185,536

From the foregoing calculation it can be seen that General Host's present holdings of just over 1,000,000 shares of Armour stock are sufficient to guarantee election of no more than one director in 1969. At most, two directors might possibly be elected by General Host if some of Armour's stockholders do not vote.

12. Moreover, only six of Armour's present seventeen directors are standing for election at the forthcoming Annual Meeting. Therefore, even if every presently outstanding share of Armour stock were tendered, it does not appear presently possible for General Host to elect more than six directors out of seventeen in 1969. Of course, it is highly unlikely that all outstanding stock will be tendered. Certainly, General Host has no reason to suppose that Armour's present management will tender its stock. Therefore, realistically, General Host cannot expect to own enough stock to elect more than four or possibly five directors at the 1969 Annual Meeting, even if General Host obtains valid proxies to vote the stock from all persons who tender to it.

13. Not only may General Host have only a minority position on Armour's Board during 1969 regardless of the extent of its ownership of Armour stock, but in addition, General Host may very well have no representative at all on the Executive Committee of the Board. Armour's By-Laws provide for an Executive Committee which is elected by the directors and which presently consist of eleven of the seventeen directors, including the Chairman and the President. This Executive Committee may exercise most of the powers of the Board of Directors in the management of the business and affairs of Armour, including the hiring and firing of employees. The present management clearly controls the members of the Board and the Executive Committee.

14. So long as the present management retains a majority position on the Board of Directors and the Executive Committee, it can continue to control and operate Armour for a considerable period of time. Thus, even assuming that General Host acquires a majority stock interest in Armour through the exchange offer, it may control Armour for a considerable time.

15. The present exchange offer will not result in any merger or consolidation of General Host and Armour, and no approval for any such merger has been sought from the stockholders of either Company. Even if General Host's exchange offer is successful, Armour will still be engaging in the same businesses in which it is now engaged and General Host will continue to engage separately in its present businesses. No merger of the assets and businesses of the two corporations could possibly take place for a considerable time because the stockholders of both corporations would have to approve any such proposals by two-thirds vote at meetings called for the purpose upon notice as required by Delaware and New York law.

16. Armour and General Host will continue to be operated as separate companies, each for the benefit of its respective stockholders. Armour will continue to be subject to the provisions of the Packers' Consent Decree and General Host, once its representatives assume actual control of Armour, will be obliged to, and will see, that Armour does not engage in businesses forbidden to it by the Decree.

17. In this respect, from the point of view of compliance with the Packers' Consent Decree, there is no difference between control of Armour by General Host and the present control of Armour by Mr. Prince and his associates. Armour is forbidden by the Decree (Paragraph Second) from owning any interest in a public stockyard, and Armour was required (Paragraph Tenth) to divest itself of the stock interest it owned in the predecessor of The Union Stock Yard and Transit Company of Chicago. Nevertheless, as pointed out in the accompanying affidavit of James H. Kelley, Esq., verified the 20th day of January, 1969, Mr. Prince and his associates who presently control Armour also own, directly and indirectly, all the stock of The Union Stock Yard and Transit Company of Chicago, a posted public stockyard and, indeed, one of the stockyard interests of which Armour was required to divest itself. Thus, although the Decree forbids Armour from directly or indirectly owning an interest in a public stockyard, it has never been con-

strued to forbid the controlling stockholders of Armour from engaging in a business forbidden to Armour.

18. For the reasons stated above, no prejudice to the Government's position in this matter will occur by reason of General Host's exchange offer. On the other hand, an injunction which makes it impossible for General Host to proceed with its exchange offer in the near future will cause General Host irreparable damage. Part of this damage consists of the out-of-pocket expenses that General Host has paid and incurred in connection with the preparation of its exchange offer. Even more significant, however, are the attempts that have been made and are being made by Armour's present management to dilute General Host's stock interest in Armour through the issuance of additional shares. Any large dilution in the percentage of Armour stock owned by General Host will make any exchange offer at a later time, after litigation, much more difficult and perhaps will prevent it entirely. This is so because it would be both more difficult and more expensive to obtain 51% of a larger number of Armour shares.

19. To date Armour has proposed the acquisition of two companies in exchange for Armour common stock. The first proposed acquisition was of Williams Brothers Company in December, 1968. This proposed transaction was widely regarded as an effort by Armour's present management to escape from General Host by diluting its interest (see, for example, Exhibit B attached hereto which is subtitled "Packer Apparently is Trying to Elude General Host by Diluting Food Firm's Block—Williams Friendly to Offer").

20. On behalf of General Host, I addressed a letter to each member of Armour's Board of Directors dated December 20, 1968 (a copy of which is attached hereto as Exhibit F) asking several questions about Williams' operations. General Host regarded the proposed transaction as being unfavorable to Armour's stockholders. No reply to this letter was ever received. On December 30, 1968, however, Armour announced that the proposed deal had been cancelled.

21. Shortly thereafter, on January 3, 1969, the Chairman of Klarer of Kentucky, Inc., a regional meat packer located at Louisville, Kentucky, announced that Klarer and Armour were negotiating for the sale of Klarer's stock to Armour in exchange for Armour common stock having an approximate market value of $75 for each Klarer share. This amount of Armour stock for each Klarer share appears excessive in view of the reports by National Quotations Service that the market price of Klarer stock during the last two years has ranged between $20 and $23 per share. In addition, Klarer's 1968 sales declined 6% from 1967 and 21% from 1966 and operating results from net income of $803,000 in 1964 to a net loss of $531,000 in 1968. So far as I know this proposed acquisition by Armour remains pending.

22. The two proposed acquisitions by Armour mentioned in the preceding paragraph are the only acquisitions that have so far come to our attention. Reports have reached us from time to time that Armour's present management is very anxious to avoid control by General Host. Since Armour's present management has already sought possible acquisitions in exchange for Armour stock, there is every reason to suppose that they will continue to look for future acquisitions to dilute General Host's interest and perpetuate their own control of Armour.

23. In addition to its efforts to dilute General Host's position, Armour's management has also used Armour's financial power to interfere with General Host's relations with banks that have loaned money to General Host in the past or that might lend money to it in the future. As part of its campaign to intimidate banks, Armour sent letters, such as the one dated November 12, 1968, to Mr. Harry J. Volk, President of Union Bank, Los Angeles, California, a copy of which together with enclosure is attached hereto as Exhibit G. Union Bank has loaned money to General Host in the past and made a loan in connection with General Host's purchases of Armour stock during November, 1968. The only purpose of this letter and similar communications to other banks is to attempt to discourage them from doing business with

General Host. No doubt these efforts and similar efforts have continued and will continue if the exchange offer is enjoined and General Host's efforts to gain a controlling position in Armour are frustrated.

24. Armour can, of course, bring significant financial pressure to bear in Chicago in this connection. It is interesting to note that General Host has been unable to find a single Chicago bank willing to act as forwarding agent for Armour's stock in connection with General Host' exchange offer. General Host's banks approached several of the larger Chicago banks in an attempt to locate a forwarding agent, but each bank declined to act.

/s/ Harris J. Ashton
HARRIS J. ASHTON

[Affidavit Omitted in Printing]

ARMOUR AN D COMPANY

CHICAGC ILLINOIS

rmour Stockholders:

l Host Corporation, a company with a top-heavy debt structure, imately one-tenth the size of Armour in sales and profits, has filed stration Statement covering an exchange offer it proposes to make our stockholders in an effort to obtain control of Armour.

or each Armour common share tendered, General Host proposes to 60 principal amount of 7% subordinated debentures due in 1994 warrants expiring in 1979 to purchase General Host stock at $45 are.

due course, we will advise you of the many compelling reasons u should reject this offer out-of-hand. However, the primary pur- this letter is simply to make sure that every Armour stockholder tands the very substantial risks involved in irrevocably tendering ares to General Host until the very serious anti-trust, accounting, rvice and other problems inherent in this offer have been resolved fied.

Anti-Trust Considerations

the opinion of Sullivan & Cromwell and Kirkland, Ellis, Hodson, z & Masters, Counsel to Armour, control of Armour by General s now constituted, would be a flagrant violation of the principles of kers' Consent Decree of 1920.

so, General Host now acknowledges that:

> "The Department of Justice has indicated to General (Host) that in its view the acquisition of control of Armour by General under present circumstances would violate this Decree."

It is important that Armour stockholders understand the basic prin- es involved.

For 48 years, Armour has been subject to the restrictions imposed the 1920 Packers' Consent Decree which perpetually enjoins Armour m the manufacture and/or sale of some 140 food and non-food items, luding bread, biscuits, flour, sugar, rice, condiments, coffee, tea, milk, am, soft drinks, fresh and canned fish, fresh and canned vegetables, sh and canned fruits, nuts, jellies, cereals, and the retail sale of meat, of which General Host produces or sells in its stores or serves in its taurants. The Decree clearly applies not only to Armour but to any son controlling Armour.

> "In addition, General may find it necessary or expedient to somewhat modify the product line carried in its convenience stores."

No explanation is given as to how a bakery (General Host's major business) can modify its operations so as to terminate the production and sale of baked goods and still stay in business or how a convenience store which is another name for a mini-supermarket can withdraw its basic food products and still attract customers. Even General Host's tourism facilities are dependent upon restaurant operations which would violate the Consent Decree.

Conceivably the management of General Host might be willing to liquidate all of its present business and reduce General Host to a thinly capitalized shell, in order to obtain and exercise control of Armour. What General Host might realize upon a forced sale of its forbidden businesses is unknown, but since these businesses have not historically sold at a high ratio to earnings, it is safe to say that the price would not approach the very high 40 times earnings ratio at which General Host's stock now sells and that the sales would adversely affect General Host's earnings, financial position and the market price of its stock.

Income Considerations

If General Host elects to dispose of its present business, the pro forma combined statements of income presented in its Registration State- ment are meaningless. However, even as presented, these statements raise disturbing questions as to the ability of General Host to pay interest and amortization on its huge debt. Also, they do not take into account the fact that General Host estimates it will spend up to about $9 million in expenses in making the offer. Interest on this amount, which is almost 25% of General Host's net worth, would substantially reduce net income. Nor do the figures of per share earnings reflect the dilution from the potential exercise of up to 8,655,000 stock purchase warrants which is over three times the number of shares now outstanding.

As now set forth in General Host's Registration Statement, the tabu- lation of pro forma combined earnings figures indicates that before extraordinary items General Host alone earned $1.00 per share in the 52 weeks ended October 5, 1968, that if General Host acquires 40% of Armour (which would not permit the consolidation of their accounts for accounting purposes) General Host's earnings would become a deficit of

...in an effort to obtain control of Armour.

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occasions Armour has unsuccessfully sought to have the ified, and there is no reason to believe that General Host will successful in this regard than Armour has been.

almost all of General Host's operations are dependent upon ecifically forbidden by the Consent Decree, in our opinion and Counsel, before General Host could exercise control of Armour, ve to liquidate virtually its entire business. Otherwise, the of Justice would be successful, we and our Counsel believe, a Court Order holding that General Host's control of Armour Decree and that it is required to divest itself of either its ck or the forbidden businesses.

atements in General Host's Registration Statement as to the plications of its offer are incomplete and misleading. There r, a few statements which are very enlightening:

". . . it is possible that a court might construe the Decree to estrict General's control of Armour";

"Accordingly, it may become necessary or desirable for General o modify, dispose of or agree to dispose of, a substantial part of its assets and businesses";

"The assets or businesses . . . General might be required to modify or divest could include some, or substantially all of its food production and processing operations" (73% of sales in the first 40 weeks of fiscal 1968);

No explanation is given as to how a bakery (General Host's major business) can modify its operations so as to terminate the production and sale of baked goods and still stay in business or how a convenience store which is another name for a mini-supermarket can withdraw its basic food products and still attract customers. Even General Host's tourism facilities are dependent upon restaurant operations which would violate the Consent Decree.

Conceivably the management of General Host might be willing to liquidate all of its present business and reduce General Host to a thinly capitalized shell, in order to obtain and exercise control of Armour. What General Host might realize upon a forced sale of its forbidden businesses is unknown, but since these businesses have not historically sold at a high ratio to earnings, it is safe to say that the price would not approach the very high 40 times earnings ratio at which General Host's stock now sells and that the sales would adversely affect General Host's earnings, financial position and the market price of its stock.

Income Considerations

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As now set forth in General Host's Registration Statement, the tabulation of pro forma combined earnings figures indicates that before extraordinary items General Host alone earned $1.00 per share in the 52 weeks ended October 5, 1968, that if General Host acquires 40% of Armour (which would not permit the consolidation of their accounts for accounting purposes) General Host's earnings would become a deficit of $1,201,000 before extraordinary items which would be equivalent to earnings of 28¢ per share assuming conversion of General Host's convertible notes, and that if General Host acquires as much as 60% of Armour (which would permit the consolidation of their earnings for accounting purposes) these earnings before extraordinary items would be $1.20 per share.

But these figures do not mean that General Host would have the cash flow necessary to service its greatly increased debt.

For so long as there continue to be any public stockholders of Armour, even if General Host were in control of Armour's Board of Directors, which is classified and elected for three-year terms, General Host could not use Armour's assets and cash flow—except by the declaration of dividends—to service General Host's indebtedness.

In contrast to these dubious and speculative values, Armour's prospects were never brighter. For the year ended November 2, 1968, our earnings before extraordinary items amounted to $3.73 a share on the number of common shares outstanding at that date, and present indications are that earnings will continue to improve.

Sincerely,

William Wood Prince

WILLIAM WOOD PRINCE

Chairman of the Board

EXHIBIT B

WSJ
10/23/68

HEARD ON THE STREET

By DAN DORFMAN

A top financial source close to Armour, the billion-dollar Chicago-based meat packer, put it bluntly yesterday: "We aren't going to bed with General Host, even if they try to drag us there," he said. "We don't want any part of them."

His reference was to growing Wall Street rumors that General Host, Armour's biggest holder with 12.4% of the meat packer's common, is readying moves aimed at acquiring control of Armour.

Apparently reacting to these rumors, Armour's stock touched a high yesterday of 54¾. It closed at 54½, up ⅝, on a turnover of 39,000 shares.

General Host wound up the day with a gain of ⅞ to 35⅜ on a volume of 14,200 shares.

In an interview yesterday, Richard C. Pistell, General Host's chairman and chief executive officer, declared: "We don't care whether Armour wants us or not. We're the largest investor in Armour and we're going to look to maximize the return on our investment."

Asked about some Wall Street conjecture that General Host might seek to dispose of its holdings in Armour in view of the fact the Justice Department is looking into the company's purchase of the Armour shares, Mr. Pistell retorted:

"We've already been contacted by individuals interested in acquiring our position in Armour. Let me make it clear—we're not selling. We're in this situation to stay."

General Host, a diversified concern with interests in convenience food, food service and tourism, acquired its Armour holdings (750,000 shares) from Gulf & Western Industries. It bought 150,000 shares in August and the balance earlier this month.

Where does General Host go from here?

The talk in some Wall Street circles is that General Host may seek to acquire some of the Armour blocks held by the funds and follow with a tender offer for control of the company. At the end of the second quarter of 1968, fund portfolios accounted for roughly 15% of Armour's common.

Mr. Pistell would make no comment on this conjecture.

Some Wall Streeters think General Host will be unsuccessful in its pursuit of Armour. Their view is that Armour will resort to a merger with another company rather than relinquish control to General Host. There is also the belief in some quarters that General Host could run afoul of the packers' consent decree of 1920, which prohibits Armour from dealing in 140 food and nonfood items.

Mr. Pistell declined to discuss the antitrust implications. But a source close to the company noted that the consent decree doesn't prevent General Host from buying Armour stock. "And what happens," he asked, "if there is no effort to merge Armour and General Host? Suppose there is only a plan for consolidation of the financial statements—an action which could be achieved should General Host obtain 51% of Armour's stock."

"It's possible," the source said, "that the Justice Department might not object to such an arrangement in view of its non-action in the merger between *International Telephone & Telegraph* and *Continental Baking*, the country's biggest baker."

Mr. Pistell said he thought "General Host's aggressive management could help invigorate the sales and profitability of Armour," but he declined to elaborate on the methods.

Asked whether General Host is looking into any other acquisition possibilities, Mr. Pistell said the company is "examining the possibility" of acquiring an airline listed on the Big Board, but would make no further comment on the subject.

T. Harris Ashton, president of General Host, disclosed that the company would report higher sales and earnings for both the 16 weeks and 40 weeks ended Oct. 5.

He estimated net for the 16 weeks at about $1.7 million, or 71 cents a share, on sales of $64.7 million, up from a year-earlier profit of $1 million, or 46 cents a share, on volume of $64 million. Mr. Ashton estimated net for the 40 weeks at about $3.2 million, or $1.30 a share, on sales of $156.2 million. A year earlier, the firm earned $2.2 million, or 96 cents a share, on sales of $152 million.

Figures include the results of Li'l General Stores, which was merged into the company last July on a pooling-of-interests basis. The 1968 profit estimates include extraordinary items of $517,270 or 21 cents a share.

Mr. Ashton projected 1968 earnings of about $1.50 a share on sales of more than $200 million, up from $1.21 a share a year earlier on volume of $155.2 million.

• • • •

EXHIBIT C

WSJ
12/13/68

IN TENDER BID

PACKER APPARENTLY IS TRYING TO ELUDE GENERAL HOST BY DILUTING FOOD FIRM'S BLOCK

WILLIAMS FRIENDLY TO OFFER

By GEORGE GRIMSRUD
Staff Reporter of THE WALL STREET JOURNAL

Chicago—Armour & Co., fighting a possible take-over bid by General Host Corp., said it plans to exchange offer to shareholders of Williams Brothers Co., a Tulsa-based pipeline and pipeline services concern which has failed in two merger attempts this year.

Armour said it would swap 1⅓ shares of its common for each one of Williams' approximately 2.9 million common shares outstanding.

On the New York Stock Exchange yesterday, Armour common closed $59, down $1.625, giving the exchange offer a maximum value of about $225 million. Williams closed at $70.625, up $4, after reaching a high of $73.

In Tulsa, Williams called the Armour proposal "attractive."

The exchange offer announcement came amid rumors that General Host was considering a tender offer of about $70 per Armour share. General Host announced last week that it had increased its interest in Armour to 1 million shares, or 16.5%. General Host previously had bought 750,000 shares from Gulf & Western Industries, Inc., which had backed away from merger plans with Armour shortly after the Justice Department announced it was investigating.

Armour, a food, chemicals and industrial products company, has indicated opposition to being acquired by General Host, a New York-based diversified concern with con-

venience food, food service and tourism operations. Armour has said that General Host would be violating the principles of a packers consent decree of 1920 and general antitrust law if it were acquiring Armour stock for other than investment purposes.

Armour's Possible Motive

According to other rumors, Armour, before giving in to General Host, would rather seek a merger partner it considers more suitable. By acquiring Williams, Armour might prevent a bid by General Host, which yesterday said it is "studying" the Armour-Williams exchange offer.

If Armour's offer for Williams succeeded, General Host's percentage interest in Armour would be drastically reduced, based on its current holdings. On the terms announced, Armour would issue about 3.8 million common shares. Added to about 6.1 million shares currently outstanding, Armour would have nearly 10 million shares outstanding. Thus, General Host's interest would be cut to about 10%.

Armour announced its plans yesterday nearly three hours before its board approved the offer. A spokesman said the announcement was rushed because of a flurry of buying in Williams stock at the opening yesterday.

The exchange offer still needs approval by Armour stockholders, as well as directors and stockholders of Williams, a favorable tax ruling, and other legal clearances.

A Williams spokesman said the company "was informed last week" that Armour was planning an offer.

Commenting on the Armour proposal, the Williams management said: "We will act promptly, with particular reference to the form of carrying it out. We will want to be certain that our shareholders have the benefits of a tax-free transaction and the assurance of continuity of management in Armour's operation."

Williams Officers' Holdings

John H. Williams, president, noted that he holds 327,814 Williams shares. Charles P. Williams, chairman,

holds 337,714 shares. And David R. Williams Jr., executive committee chairman, holds 375,054 shares.

Asked whether he intends to exchange his shares, John Williams replied: "I think that is implicit in that we think (the offer) is attractive to the shareholders. What we need now is to be informed as to the details of what the Armour board intends." He said he assumes representatives of the concerns will meet soon.

If the three Williams were to exchange their stock, they would acquire more than 1.3 million Armour shares, about 13% of Armour's common, or the largest block.

On Oct. 31, Williams announced it had agreed in principle to unite with International Minerals & Chemical Corp., Skokie, Ill., a fertilizer producer. Two weeks later, the companies announced they had terminated merger discussions. Before that, Williams had planned to combine with ACF Industries Inc., New York, but that was called off in September.

Williams' nine-month earnings were $12 million, or $3.60 a share, on sales of $75.1 million, down from $12.5 million, or $3.78 a share, a year earlier.

Armour's operating net in the year ended Nov. 2, was $25.2 million, or $3.15 a share on 7,225,000 weighted average shares outstanding during the year. This was up from the year-before's $22.3 million, or $2.61 a share, on 7,568,000 weighted average shares.

Based on 6,095,000 shares outstanding at Nov. 2, Armour's fiscal 1968 operating profit equalled $3.73 a share. Per-share earnings are after $2.5 million in annual dividend requirements on preferred stock. The 1.5 million decrease in common shares resulted from a $50-a-share tender offer Armour made for its stock in August.

An extraordinary charge of $13 million reduced fiscal 1968 total earnings to $12 million, or $1.32 a share. The charge represents a loss from the $130 million cash sale of Armour's domestic fertilizer assets to U.S. Steel Corp.

Armour's August tender offer appeared to be designed partly to enable Gulf & Western to sell its Armour holdings. Instead of selling the 750,000 shares back to Armour, however, Gulf & Western sold them to General Host, reportedly at a higher price.

EXHIBIT D

CERTIFICATE OF INCORPORATION OF ARMOUR & COMPANY OF DELAWARE

FIRST. The name of the corporation is ARMOUR & COMPANY OF DELAWARE.

SECOND. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

THIRD. The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

To manufacture, purchase or otherwise acquire, invest in, own, mortgage, pledge, sell, assign and transfer or otherwise dispose of, trade, deal in and deal with goods, wares and merchandise and personal property in every class and description.

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation.

To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts, and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock com-

panies, syndicates, associations, firms, trusts or persons, public or private, or by the government of the United States of America or by any foreign government, or by any state, territory, province, municipality or other political subdivision or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers and privileges of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement and enhancement in value thereof.

To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

To borrow or raise moneys for any of the purposes of the corporation and, from time to time, without limit as to amount to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes.

To buy, sell or otherwise deal in notes, open accounts, and other similar evidences of debt, or to loan money and take notes, open accounts, and other similar evidences of debt as collateral security therefor.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To have one or more offices, to carry on all or any of its operations and business and without restriction or

limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country; and in particular, but without restricting or limiting the objects and purposes hereinbefore specified in this clause, to acquire by reorganization, purchase or otherwise all the assets and business of Armour Fertilizer Works, a Puerto Rican corporation.

In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this certificate of incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is One Thousand (1,000) and the par value of each such share is One Hundred Dollars ($100.00) amounting in the aggregate to One Hundred Thousand Dollars ($100,000.00).

FIFTH. The minimum amount of capital with which the corporation will commence business is One Hundred Thousand Dollars ($100,000.00).

SIXTH. The names and places of residence of the incorporators are as follows:

NAMES	RESIDENCE
C. S. Peabbles	Wilmington, Delaware
S. M. Brown	Wilmington, Delaware
H. K. Webb	Wilmington, Delaware

SEVENTH. The corporation is to have perpetual existence.

EIGHTH. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the Corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By resolution or resolutions passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in such resolution or resolutions or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration,

which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

The corporation may in its by-laws confer powers upon its Board of Directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by statute.

TENTH. Meetings of stockholders and directors may be held without the State of Delaware, if the by-laws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be from time to time designated by the board of directors or in the by-laws of the corporation. Elections of directors need not be by ballot unless the by-laws so provide.

ELEVENTH. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators hereinbefore named for the purpose of forming a corporation in pursuance of the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 23rd day of December A. D. 1947.

/s/ C. S. Peabbles

/s/ S. M. Brown

/s/ H. K. Webb

STATE OF DELAWARE)
) SS.:
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, That on this 23rd day of December, A. D. 1947, personally came before me, M. Ruth Mannering, a Notary Public for the State of Delaware, C. S. Peabbles, S. M. Brown and H. K. Webb, all of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

/s/ M. Ruth Mannering
Notary Public

[SEAL]

STATE OF DELAWARE

[SEAL]

Office of the Secretary of State

I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "ARMOUR AND COMPANY", as received and filed in this office the twenty-fourth day of December, A.D. 1947, at 9 o'clock A.M.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eighth day of August in the year of our Lord one thousand nine hundred and sixty-eight.

/s/ Elisha C. Dukes
Secretary of State

G. L. Downs
Ass't Secretary of State

[SEAL]

APPENDIX A

Certificate of Incorporation of

ARMOUR AND COMPANY

As Amended by Joint Plan and Agreement of Merger Dated as of April 20, 1965

FIRST. The name of the corporation is ARMOUR AND COMPANY.

SECOND. Its principal office in the State of Delaware is located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent are The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware 19801.

THIRD. The nature of the business, or objects or purposes to be transacted, promoted, or carried

(a) To purchase, breed, raise, produce or otherwise acquire, invest in, own, hold, use, lease, mortgage, pledge, sell, assign, transfer or otherwise dispose of, trade, deal in and deal with any and all kinds of animals and agricultural products, and purchase, manufacture, produce or otherwise acquire, invest in, own, hold, use, lease, mortgage, pledge, sell, assign, transfer or otherwise dispose of, deal in and deal with any and all articles or things manufactured, produced, resulting or derived in whole or in part from animals or agricultural products of any kind, whether to be used as food or in commerce, manufacture, the sciences, the arts or otherwise.

(b) To purchase, manufacture, produce, refine, mine or otherwise acquire, invest in, own, hold, use, lease, mortgage, pledge, sell, assign, transfer or otherwise dispose of, trade, deal in and deal with any and all kinds of chemicals and source materials, ingredients, mixtures, derivatives, and compounds thereof, and any and all kinds of products of which any of the foregoing constitutes an ingredient or in the production of which any of the foregoing is used, including but not limited to medicines, pharmaceu-

ticals, fertilizers and industrial chemicals of all kinds.

(c) To purchase, manufacture, construct, erect, fabricate, build, press, stamp, draw, spin, furnish, equip, repair, utilize, procure, refine, mine or otherwise acquire, invest in, own, hold, use, lease, mortgage, pledge, sell, assign, transfer or otherwise dispose of, trade, deal in and with any and all kinds of metals and source materials, ingredients, mixtures, derivatives, and compounds thereof, and any and all kinds of products of which any of the foregoing constitutes an ingredient or in the production of which any of the foregoing is used, including but not limited to mechanical and electrical machinery, apparatus, equipment, implements, devices, fixtures, supplies and accessories and castings and forgings.

(d) To purchase, manufacture, produce or otherwise acquire, invest in, own, hold, use, lease, mortgage, pledge, sell, assign, transfer or otherwise dispose of, trade, deal in and deal with goods, wares and merchandise and personal property of every class and description.

(e) To engage in the business of engineering, contracting and construction, including the design, manufacture, construction, erection, alteration, repair and installation of plants, buildings, structures, ways, works, systems and mechanical, electrical, and electronic machinery, equipment, apparatus and devices.

(f) To acquire, and pay for in cash, property, stock, bonds or other securities of this corporation or otherwise, and own, hold, use, lease, mortgage, pledge, sell, assign, transfer, or otherwise dispose of, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities, of any person, firm, association, corporation or other enterprise.

(g) To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage, pledge or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privi-

leges, inventions, improvements and processes, copyrights, trademarks, trade names, concessions and formulas, of any nature whatsoever.

(h) To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts, and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock companies, syndicates, associations, firms, trusts or persons, public or private, or by the government of the United States of America, or by any foreign government, or by any state, territory, province, municipality or other political subdivision or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers and privileges of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement and enhancement in value thereof.

(i) To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

(j) To borrow or raise moneys for any of the objects or purposes of the corporation and, from time to time without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or

otherwise dispose of such bonds or other obligations of the corporation for its corporate objects or purposes.

(k) To invest its surplus funds from time to time, and to make loans insofar as permitted by law to any person, firm, association, corporation or other enterprise, either with or without security, in furtherance of the objects or purposes of the corporation.

(l) To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

(m) To have one or more offices, to carry on all or any of its operations and business and, without restriction or limit as to amount, to purchase or otherwise acquire, own, hold, use, lease, mortgage, pledge, sell, assign, transfer, convey or otherwise dispose of, real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

(n) In general to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this Certificate of Incorporation, but the objects and purposes specified in each of the foregoing clauses of this Article shall be regarded as independent objects and purposes.

FOURTH. The total number of shares of all classes of stock which the corporation shall have authority to issue is Fifteen Million Nine Hundred Thousand (15,900,000) of which Five Hundred Fifty Thousand (550,000) shares shall be $4.75 Preferred Stock of the par value of One Hundred Dollars ($100) per share, Three Hundred Fifty Thousand (350,000) shares shall be Series Preferred Stock of the par value of One Hundred Dollars ($100) per share, and Fifteen Million (15,000,000) shares shall be Common Stock of the par value of Five Dollars ($5) per share.

The designations, the powers, preferences and rights, and qualifications, limitations or restrictions of the $4.75 Preferred Stock, the Series Preferred Stock, and the Common Stock are as follows:

The $4.75 Preferred Stock

(1) The holders of the $4.75 Preferred Stock shall be entitled to receive, when and as declared by the board of directors, out of any assets of the corporation legally available for dividends, cumulative dividends in cash, payable on January 15, April 15, July 15 and October 15 in each year, at the annual rate of $4.75 per share, and no more. Such cumulative dividends shall accrue from the tenth day preceding the date of issue of the $4.75 Preferred Stock. If the date of issue shall be less than thirty days prior to a quarterly payment date, payment of the initial dividend shall be made on the second quarterly payment date after the date of issue.

(2) In the event of any liquidation, dissolution or winding up of the corporation, the holders of the $4.75 Preferred Stock shall be entitled to receive out of the assets of the corporation available for distribution to stockholders an amount equal to $100 per share if such liquidation, dissolution or winding up be involuntary or, if such liquidation, dissolution or winding up be voluntary, an amount equal to the lesser of (i) $102 per share or (ii) an amount equal to the then current redemption price for the $4.75 Preferred Stock, plus, in each case, a further amount equal to all unpaid cumulative dividends on the $4.75 Preferred Stock accrued to the date when

such payment shall be made available to the holders thereof, before any distribution of assets shall be made to the holders of the Common Stock or other stock ranking junior to the $4.75 Preferred Stock with respect to liquidation rights. After such amounts shall have been paid or irrevocably set aside for payment in full to the holders of the $4.75 Preferred Stock, they shall be entitled to no further payment or distribution other than from any such fund irrevocably set aside. If, upon such liquidation, dissolution or winding up, the assets thus distributable to the holders of the $4.75 Preferred Stock shall be insufficient to permit the payment to such holders of the preferential amounts aforesaid, then such assets shall be distributed ratably among the holders of the $4.75 Preferred Stock according to the number of shares held by each.

The liquidation, dissolution or winding up of the corporation, as such terms are used in the foregoing paragraph, shall not be deemed to include any consolidation or merger of the corporation with or into any one or more other corporations, or the sale of all or any of the assets of the corporation.

(3) After September 1, 1970, but not before, the $4.75 Preferred Stock may be redeemed at any time, or from time to time, in whole or in part, at the option of the corporation, expressed by resolution of the board of directors. The redemption price per share of the $4.75 Preferred Stock shall be $102 if redeemed prior to September 1, 1971, $101.75 if redeemed thereafter and prior to September 1, 1972, $101.50 if redeemed thereafter and prior to September 1, 1973, $101.25 if redeemed thereafter and prior to September 1, 1974, and $101 if redeemed therafter, plus in every case an amount equal to all unpaid cumulative dividends accrued on the shares to be redeemed to the date fixed for redemption.

Notice of every such redemption shall be given at least thirty days prior to the date fixed for such redemption to the holders of record of the shares so to be redeemed, and shall be sufficiently given if the corporation shall cause a copy thereof to be mailed to such holders of record at their respective addresses as shown by the books of the

corporation by first class mail, postage prepaid; provided, however, that the failure to mail such notice to one or more of such holders shall not affect the validity of such redemption as to the other such holders.

In case of redemption of a part only of the $4.75 Preferred Stock at the time outstanding, the corporation shall select by lot the shares so to be redeemed. The board of directors shall have full power and authority to prescribe the manner in which the selection by lot shall be conducted and, subject to the limitations and provisions herein contained, the terms and conditions upon which the $4.75 Preferred Stock shall be redeemed from time to time.

If such notice of redemption shall have been duly given, and if on or before the redemption date specified therein all funds necessary for such redemption shall be and continue available for payment on and after the redemption date upon surrender of the certificates for the shares so called for redemption, then, notwithstanding that any certificate for shares so called for redemption shall not have been surrendered for cancellation, the shares so called for redemption shall on and after such redemption date no longer be deemed to be outstanding, and all rights with respect to such shares shall forthwith on such redemption date terminate, except only the right of the holders of the certificates therefor, upon surrender thereof, to receive the amount payable on redemption thereof, without interest.

If such notice of redemption shall have been duly given, or if the corporation shall have granted to the bank or trust company, hereinafter referred to, irrevocable authorization promptly to give or complete such notice, and if on or before the redemption date specified therein the funds necessary for such redemption shall have been deposited in trust for the pro rata benefit of the holders of the shares so called for redemption with a bank or trust company in good standing, designated in such notice, having capital, surplus and undivided profits aggregating at least $25,000,000 according to its then latest published statement of condition, then, notwithstanding that such deposit shall have been made less

than thirty days after the notice of redemption, and that any certificates for shares so called for redemption shall not have been surrendered for cancellation, from and after such deposit (or from and after the redemption date if such notice of redemption shall fail to state that the holders of the shares so called for redemption may receive their redemption price at any time after such deposit) all shares of $4.75 Preferred Stock with respect to which such deposit shall have been made shall no longer be deemed to be outstanding and all rights with respect to such shares shall forthwith terminate, except only the right of the holders of the certificates therefor, upon surrender thereof, to receive the redemption price thereof out of the funds so deposited, without interest. Any funds so deposited, and unclaimed at the end of six years from the redemption date, shall be released or repaid to the corporation, after which the certificate holders entitled thereto shall look only to the corporation for payment thereof, without interest.

The shares of $4.75 Preferred Stock which shall have been redeemed as aforesaid shall be cancelled and shall not be reissued, and the corporation shall from time to time cause all such shares to be retired in the manner provided by law.

(4) So long as any shares of $4.75 Preferred Stock shall be outstanding, the corporation shall, on or before September 1 in each year, beginning in the year 1971, pay to a bank or trust company (hereinafter called the Sinking Fund Agent) appointed from time to time by the corporation and being a bank or trust company meeting the requirements of Paragraph (3) of this ARTICLE FOURTH, as and for a sinking fund for the $4.75 Preferred Stock, a sum sufficient for the redemption in such year, in accordance with the provisions of this Paragraph (4) of 6,000 shares of $4.75 Preferred Stock (hereinafter referred to as the sinking fund payment). As and for all or any part of any sinking fund payment, the corporation may, on or before September 1 of each year, beginning in the year 1971, deliver to the Sinking Fund Agent certificates for $4.75 Preferred Stock (which may be in cancelled form) theretofore issued by the corpora-

tion and which were repurchased by it or redeemed otherwise than through the operation of the sinking fund provided for in this Paragraph (4), and receive credit upon such sinking fund payment, with respect to a sum sufficient for the redemption, in accordance with the provisions of this Paragraph (4), of the number of shares of $4.75 Preferred Stock so delivered. Any moneys in the sinking fund for the $4.75 Preferred Stock on September 1 of any year shall be applied by the Sinking Fund Agent to the redemption on October 1 of such year of shares of $4.75 Preferred Stock at the sinking fund redemption price consisting of $100 per share plus an amount equal to all unpaid cumulative dividends accrued to the date fixed for redemption on each share so to be redeemed. Such redemption shall be effected by lot in such manner as the Sinking Fund Agent shall determine, and the Sinking Fund Agent is authorized to effect such redemption in the name of the corporation in the manner and with the effect provided by Paragraph (3) of this ARTICLE FOURTH, except that the notice of redemption shall state that the shares are being redeemed for the sinking fund; provided, however, that if the amount of the sinking fund payment in any year shall be less than $25,000, such amount may, at the option of the corporation, remain in the sinking fund and be applied as part of the next succeeding sinking fund payment. Shares of $4.75 Preferred Stock which shall be delivered to the Sinking Fund Agent by the corporation as a credit upon a sinking fund payment or which shall be called for redemption through the operation of the sinking fund shall be cancelled and shall not be reissued or again delivered for credit upon any sinking fund payment, and the corporation shall from time to time cause all such shares to be retired in the manner provided by law.

If any sinking fund payments would be required at a time when dividends upon the $4.75 Preferred Stock shall be in arrears, the corporation shall not be required to make a sinking fund payment at that time, but shall nevertheless be considered, for the purposes of this ARTICLE FOURTH, to be in default with respect to its sinking fund obligations and shall be required to make such de-

faulted sinking fund payment at the earliest time thereafter when dividends upon the $4.75 Preferred Stock shall not be in arrears. Within forty days after the corporation shall have made any such defaulted sinking fund payment, the Sinking Fund Agent shall apply the same to redemption of $4.75 Preferred Stock in the manner and at the price above in this Paragraph (4) provided.

(5) So long as any shares of $4.75 Preferred Stock shall be outstanding, no dividends, other than dividends payable in junior stock shall be paid or declared, nor shall any distribution be made, on any junior stock nor shall any shares of any junior stock be acquired for a consideration by the corporation or by any subsidiary, unless:

(a) Full cumulative dividends on the $4.75 Preferred Stock for all the then past and for the then current dividend periods shall have been paid, or declared and set apart for payment, except as otherwise provided in the last sentence of Paragraph (1) of this ARTICLE FOURTH; and

(b) All sinking fund payments required by Paragraph (4) of this ARTICLE FOURTH to have been made shall have been made in full.

(6) So long as any shares of $4.75 Preferred Stock shall be outstanding, the corporation shall not, without the affirmative vote of the holders of at least two-thirds of the shares of $4.75 Preferred Stock at the time outstanding, given in person or by proxy, either at a special meeting called for the purpose or at any annual meeting of stockholders if appropriate notice of such proposed action is given, at which the $4.75 Preferred Stock shall vote separately as a single class, or, alternatively, without the written consent of the holders of all the shares of $4.75 Preferred Stock at the time outstanding:

(a) Amend or repeal any provision of or add any provision to the Certificate of Incorporation, as amended, of the corporation, or take any other action, so as to alter materially any existing provision of the $4.75 Preferred Stock; or

(b) Authorize, or increase, or issue, any class or series of any class of stock of the corporation ranking

prior to the $4.75 Preferred Stock, or increase the authorized amount of the $4.75 Preferred Stock; provided, however, that no vote or consent of the holders of the $4.75 Preferred Stock shall be required to issue any stock, regardless of priority, for the purpose of redeeming or otherwise retiring the $4.75 Preferred Stock, if, prior to or contemporaneously with the issuance thereof, provision has been made in accordance with the provisions of Paragraph (3) of this ARTICLE FOURTH for the redemption of all $4.75 Preferred Stock at the time outstanding; or

(c) Sell, lease or convey all or substantially all the property or business of the corporation, or voluntarily liquidate or dissolve the corporation, or consolidate or merge the corporation with or into any other corporation; provided, however, that no such vote or consent of the holders of the $4.75 Preferred Stock shall be required for a consolidation or merger of the corporation if each holder of shares of $4.75 Preferred Stock immediately prior to such consolidation or merger shall, upon the occurrence thereof, possess the same or equivalent number of shares of the resulting corporation (which may be the corporation or another corporation) having substantially the same terms and provisions as the shares of $4.75 Preferred Stock and the resulting corporation will have, immediately after such consolidation or merger, no other stock either authorized or outstanding ranking prior to or on a parity with such shares.

(7) So long as any shares of $4.75 Preferred Stock shall be outstanding, the corporation shall not, without the affirmative vote of the holders of at least a majority of the shares of $4.75 Preferred Stock at the time outstanding, given in person or by proxy, either at a special meeting called for the purpose or at any annual meeting of stockholders if appropriate notice of such proposed action is given, at which the $4.75 Preferred Stock shall vote separately as a single class, or, alternatively, without the written consent of the holders of all the shares of $4.75 Preferred Stock at the time outstanding, authorize, or increase, or issue, any class or series of

any class of stock of the corporation ranking on a parity with the $4.75 Preferred Stock; provided, however, that no vote or consent of the holders of the $4.75 Preferred Stock shall be required to issue any stock, regardless of parity, for the purpose of redeeming or otherwise retiring the $4.75 Preferred Stock, if prior to or contemporaneously with the issue thereof, provision has been made in accordance with the provisions of Paragraph (3) of this ARTICLE FOURTH for the redemption of all the $4.75 Preferred Stock at the time outstanding.

(8) For the purposes of this ARTICLE FOURTH the term "ranking prior to" the $4.75 Preferred Stock shall have reference to a class or series of a class of stock which is preferential to the $4.75 Preferred Stock with respect to dividends or liquidation rights; the term "ranking on a parity with" the $4.75 Preferred Stock shall have reference to a class or series of a class of stock which is equal to the $4.75 Preferred Stock with respect to dividends or liquidation rights; and the term "junior stock" shall mean the Common Stock and any other class of stock of the corporation not ranking prior to or on a parity with the $4.75 Preferred Stock.

(9) The holders of $4.75 Preferred Stock shall have no right to vote except as otherwise herein or by statute specifically provided.

If and when the corporation shall be in default in the payment, in whole or in part, of each of six quarterly dividends (whether or not consecutive) accrued on the $4.75 Preferred Stock, whether or not earned or declared, the holders of the outstanding $4.75 Preferred Stock, voting separately as a single class, shall become entitled to elect two directors of the corporation to serve in addition to the directors elected pursuant to ARTICLE NINTH. Such right to elect additional directors may be exercised at any annual meeting of stockholders, or, within the limitations hereinafter provided, at a special meeting of stockholders held for such purpose. If such default shall occur more than ninety days preceding the date of the next annual meeting of stockholders as fixed by the by-laws of the corporation, then a special meeting of the holders of the $4.75 Preferred Stock shall be called by the

Secretary of the corporation upon the written request of the holders of not less than 10% of the $4.75 Preferred Stock then outstanding, such meeting to be held within sixty days after the delivery to the Secretary of such request. Such additional directors, whether elected at an annual or a special meeting, shall serve until the next annual meeting and until their successors shall be duly elected and qualified, unless their term shall sooner terminate pursuant to the provisions of the Paragraph (9). At any meeting for the purpose of electing such additional directors, the holders of 35% of the $4.75 Preferred Stock then outstanding shall constitute a quorum, and any such meeting shall be valid notwithstanding that a quorum of the outstanding shares of other class or classes shall not be present or represented thereat. At the time of any such meeting at which a quorum shall be present, the number of directors constituting the whole board of directors shall be deemed to be increased by two. If a vacancy shall occur in the board of directors by reason of the death, resignation or inability to act of any such additional director, such vacancy shall be filled only by the vote of the holders of the $4.75 Preferred Stock, voting separately as a single class, at a special meeting of the holders of the $4.75 Preferred Stock requested, called and held in the same manner as the special meeting hereinabove referred to. If and when all dividends in default on the $4.75 Preferred Stock shall be paid or irrevocably set aside for payment, the right of the holders of the $4.75 Preferred Stock as a class to elect directors shall then cease, and if any directors were elected by the holders of the $4.75 Preferred Stock as a class, the term of such directors shall terminate, and the number of directors constituting the whole board of directors shall be reduced by the number of such additional directors. The above provisions for the vesting of such voting right in the holders of the $4.75 Preferred Stock as a class shall apply, however, in case of any subsequent default under this Paragraph (9).

The holders of $4.75 Preferred Stock shall not be entitled to receive notice of any meeting of stockholders at which they are not entitled to vote or consent.

Except as in this Certificate of Incorporation or by statute specifically provided, the holders of the Common Stock of the corporation shall have the exclusive right to vote for the election of directors and for all other purposes. The total number of directors may be increased without any vote or consent of the holders of $4.75 Preferred Stock.

(b) No holder of $4.75 Preferred Stock, as such, shall have any preemptive right to subscribe to stock, obligations, warrants, rights to subscribe to stock or other securities of the Corporation of any kind or class, whether now or hereafter authorized.

The Series Preferred Stock

(a) The Series Preferred Stock may be issued from time to time in one or more series and with such designation for each such series as shall be stated and expressed in the resolutions or resolutions providing for the issue of each such series adopted by the board of directors. The board of directors in any such resolution or resolutions is expressly authorized to state and express for each such series:

(i) The voting powers, if any, of the holders of stock of such series;

(ii) The rate per annum and the times at and conditions upon which the holders of stock of such series shall be entitled to receive dividends, and whether such dividends shall be cumulative or non-cumulative and if cumulative the terms upon which such dividends shall be cumulative;

(iii) The price or prices and the time or times at and the manner in which the stock of such series shall be redeemable;

(iv) The right to which the holders of the shares of stock of such series shall be entitled upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation;

(v) The terms, if any, upon which shares of stock of such series shall be convertible into or exchangeable for shares of stock of any other class or

classes or of any other series of the same or any other class or classes, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any; and

(xvi) Any other designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof so far as they are not inconsistent with the provisions of the Certificate of Incorporation, as amended, and to the full extent now or hereafter permitted by the laws of Delaware.

(2) All shares of the Series Preferred Stock of any one series shall be identical to each other in all respects, except that shares of any one series issued at different times may differ as to the dates from which dividends thereon, if cumulative, shall be cumulative.

The Common Stock

(1) The Common Stock may be issued by the corporation from time to time for such consideration and upon such terms as may be fixed from time to time by the board of directors and as may be permitted by law, without action by any stockholders.

(2) The holders of Common Stock shall be entitled to dividends only if, when and as the same shall be declared by the board of directors and as may be permitted by law.

(3) Each share of the Common Stock shall entitle the holder thereof to one vote in person or by proxy at any and all meetings of the stockholders of the corporation on all propositions, before such meetings, and at all elections of directors, except elections restricted to other classes of stock, each holder of Common Stock shall be entitled to as many votes as shall equal the number of votes which (except for this provision as to cumulative voting) he would be entitled to cast for the election of directors with respect to his shares of Common Stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or

more of them as he may see fit, which right when exercised shall be termed cumulative voting.

(16) No holder of Common Stock, as such, shall have any preemptive right to subscribe for stock, obligations, warrants, rights to subscribe for stock or other securities of the corporation of any kind or class, whether now or hereafter authorized.

(17) The corporation may, but shall not be obliged to, issue a certificate for a fractional share of Common Stock, and, by action of its board of directors, may either pay cash therefor or issue in lieu thereof scrip or other evidence of ownership which shall entitle the holder to receive a certificate for a full share of Common Stock upon the surrender of such scrip or other evidence of ownership aggregating a full share, but which shall not, unless otherwise provided, entitle the holder to exercise any voting right, or to receive dividends thereon, or to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip or evidence of ownership to be issued subject to the condition that it shall become void if not exchanged for share certificates before a specified date, or subject to the condition that the shares of Common Stock for which such scrip or evidence of ownership is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or evidence of ownership, or subject to any other condition which the board of directors may deem advisable.

FOURTH: The minimum amount of capital with which the corporation will commence business is one hundred thousand dollars ($100,000.00).

SIXTH: The names and places of residence of the incorporators are as follows:

Name	Residence
C. S. Peebles	Wilmington, Delaware
S. M. Brown	Wilmington, Delaware
H. K. Wild	Wilmington, Delaware

SEVENTH: The corporation is to have perpetual exist-

EIGHTH. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH. At the annual election of directors to be held at the annual meeting of stockholders in 1961, the directors to be elected by the holders of Common Stock shall be divided into three classes, as nearly equal in number as may be, the term of office of those of the first class to expire at the first annual meeting of stockholders after their election, and the term of office of those of the second class to expire at the second annual meeting of stockholders after their election, and the term of office of those of the third class to expire at the third annual meeting of stockholders after their election. At each annual election held after such classification and election to be held in 1961, directors chosen to succeed those whose terms expire shall be elected for a term of office to expire at the third annual meeting of stockholders after their election. The provisions of this ARTICLE NINTH shall not apply to directors elected pursuant to ARTICLE FOURTH.

TENTH. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

(a) To make, alter or repeal the by-laws of the corporation;

(b) To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation;

(c) To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created;

(d) By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the corporation, which, to the extent provided in the resolution or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed

to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

ELEVENTH. The board of directors, by the affirmative vote of a majority of the whole board, may authorize and cause to be issued bonds, debentures, and other securities which may be convertible into shares of stock of any class (except the $4.75 Preferred Stock) or other securities of any kind of the corporation; and may authorize and cause to be issued warrants, options, and other instruments evidencing rights to subscribe for, purchase, or otherwise acquire shares of stock of any class (except the $4.75 Preferred Stock) or other securities of any kind of the corporation.

TWELFTH. No contract or other transaction between the corporation and any other entity or person (including directors, officers and stockholders of the corporation) and no act of the corporation shall be invalidated or rendered voidable solely by reason of the fact that any of the directors, officers or stockholders of the corporation are pecuniarily or otherwise interested in such contract, transaction or act of the corporation, individually or as directors, trustees, partners, or officers, or by reason of a pecuniary or other interest in such entity or person; and any director of the corporation who is so interested may be counted in determining the existence of a quorum at any meeting of the board of directors of the corporation which shall authorize any such contract, transaction or act and may vote at any such meeting to authorize any such contract, transaction or act.

THIRTEENTH. The board of directors, by the affirmative vote of a majority of the whole board, and irrespective of any personal interest of its members, shall have authority to provide reasonable compensation of all directors for services, ordinary or extraordinary, to the corporation as directors, officers or otherwise.

FOURTEENTH. Any person who at any time shall serve, or shall have served, as director, officer, or em-

ployee of the corporation, or of any other enterprise at the request of the corporation, and the heirs, executors and administrators of such person, shall be indemnified by the corporation against all costs and expenses (including but not limited to counsel fees, amounts of judgments paid, and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, in which he or they may be involved by virtue of such person being or having been such director, officer, or employee; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duties as such director, officer, or employee, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the board of directors, there is not reasonable ground for such person being adjudged liable for negligence or misconduct in the performance of his duties as such director, officer, or employee, or (iii) any amount paid or payable to the corporation or such other enterprise. The foregoing indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders, or otherwise.

FIFTEENTH. Meetings of stockholders and directors may be held outside the State of Delaware, if the by-laws so provide. Election of directors need not be by ballot unless the by-laws of the corporation shall so provide. The books and records of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such places as may be designated from time to time by the board of directors or in the by-laws.

SIXTEENTH. The corporation reserves the right to amend, alter, change, or repeal any provision now or hereafter contained in this Certificate of Incorporation, and to add new provisions, in the manner now or here-

after prescribed by statute, and the rights of stockholders shall be and remain subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators herein above named for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set our hands and seals this 23rd day of December A. D. 1947.

C. S. PEABBLES (SEAL)
S. M. BROWN (SEAL)
H. K. WEBB (SEAL)

STATE OF DELAWARE)
) SS:
COUNTY OF NEW CASTLE)

BE IT REMEMBERED that on this 23rd day of
A.D. 1947, personally came before me, M. Ruth
ing, a Notary Public for the State of Delawa
Peabbles, S. M. Brown and H. K. Webb, all of t
to the foregoing Certificate of Incorporation,
me personally to be such, and severally acknowl
said certificate to be the act and deed of the signers respectively and that the facts therein stated are truly set forth.

S

GIVEN under my hand and seal of office the day and year aforesaid.

M. RUTH MANNERING
Notary Public

M. Ruth Mannering
Notary Public
Appointed Feb. 10, 1947
State of Delaware
Term Two Years

STATE OF DELAWARE

[SEAL]

Office of Secretary of State

I, Elisha C. Dukes, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Agreement of Merger of the "BALDWIN-LIMA-HAMILTON CORPORATION", a corporation organized and existing under the laws of the State of Pennsylvania, with and into the "ARMOUR AND COMPANY", a corporation organized and existing under the laws of the State of Delaware, under the name of "ARMOUR AND COMPANY", as received and filed in this office the second day of July, A.D. 1965, at 2 o'clock P.M.

And I do hereby further certify that the aforesaid Corporation shall be governed by the laws of the State of Delaware.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eighth day of August in the year of our Lord one thousand nine hundred and sixty-eight.

/s/ Elisha C. Dukes
Secretary of State

/s/ G. L. Downs
Ass't Secretary of State

EXHIBIT E

By-Laws
of
ARMOUR AND COMPANY
(a Delaware Corporation)

ARTICLE I.

OFFICES.

SECTION 1. *Principal Office.* The principal office of the Corporation in the State of Delaware shall be 100 West Tenth Street, in the City of Wilmington, County of New Castle, and the name of the resident agent in charge thereof shall be The Corporation Trust Company.

SECTION 2. *Other Offices.* The Corporation shall have a General Office in Chicago, Illinois and such other offices, within or without the State of Delaware, as the Board of Directors may from time to time determine.

ARTICLE II.

SEAL.

The corporate seal shall have inscribed thereon the name of the Corporation and the words "Corporate Seal", and "Delaware".

ARTICLE III.

MEETINGS OF STOCKHOLDERS.

SECTION 1. *Annual Meeting.* The annual meeting of the stockholders, beginning with the annual meeting to be held in 1961, shall be held in the City of Chicago, State of Illinois, at 10:00 o'clock A.M., on the 3rd Friday of February in each year, for the purpose of electing Directors and transacting such other business as may come before the meeting. The Board of Directors shall fix the place within such city for the holding of such meeting.

SECTION 2. *Special Meetings.* Special meetings of the stockholders, for any purpose or purposes, may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of meeting. Such special meetings may be called by the Chairman of the Board of Directors or the President, or by resolution duly adopted by the Board of Directors.*

(* As amended February 16, 1968.)

SECTION 3. *Notice of Meetings.* Written or printed notice shall be delivered: (A) not less than twenty days before the date of the meeting in case of (1) a change in the time or place for the holding of the Annual Meeting of the stockholders, or (2) a merger or consolidation; and (B) not less than ten days before the date of the meeting in all other cases. All notices shall state the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called; notices of meetings of stockholders for the election of Directors shall state the place at which the voting list referred to in Section 4 of this Article III shall be open to examination of stockholders for a period of ten days prior to the election. All notices shall be delivered, either personally or by mail, by or at the direction of the Board of Directors, the Chairman of the Board of Directors, the President, or the Secretary, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the stockholder at his address as it appears on the records of the Corporation, with postage thereon prepaid.

SECTION 4. *Voting Lists.* The officers having charge of the stock ledger of the Corporation shall make, at least ten days before every election of Directors, a complete list of the stockholders entitled to vote at such election, arranged in alphabetical order, with the address of and the number of shares registered in the name of each, which list, for a period of at least ten days prior to such election, shall be open to the examination of any stockholder during ordinary business hours, at a place within the city where the election is to be held, and which

place shall be specified in the notice of the meeting. Such list shall also be produced and kept at the time and place of the election during the whole time thereof, and subject to the inspection of any stockholder who may be present.

SECTION 5. *Quorum—Adjournment.* The holders of a majority of the issued and outstanding shares entitled to vote thereat, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of stockholders, except as otherwise provided by law, by the Certificate of Incorporation, or by these By-Laws.

If a quorum is present, the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote thereat, shall be the act of the stockholders of the Corporation, except as otherwise provided by law, by the Certificate of Incorporation, or by these By-Laws. If a quorum is not present, the holders of the shares present in person or represented by the proxy at the meeting, and entitled to vote thereat, shall have power, by the affirmative vote of the holders of a majority of such shares, to adjourn the meeting from time to time, without notice other than announcement at the meeting. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed.

SECTION 6. *Voting.* At any meeting of the stockholders, each stockholder having the right to vote shall be entitled to vote in person, or by proxy authorized in writing, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation; and at all elections of directors each stockholder shall be entitled to as many votes as shall equal the number of votes which (except for this provision as to cumulative voting) he would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among

the number to be voted for, or for any two or more of them as he may see fit. Except where the transfer books of the Corporation shall have been closed or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, no share of stock shall be voted on at any election of directors which shall have been transferred on the books of the Corporation within twenty days next preceding such election of directors.

Shares of its own stock belonging to the Corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of issued and outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of issued and outstanding shares at any given time.

Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation he has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy may represent said stock and vote thereon.

SECTION 7. *Judges of Election.* At each meeting of the stockholders at which any proposition is to be voted upon by ballot, the presiding officer at the meeting may, except as otherwise provided by law, appoint two or more judges of election who shall have charge of the proxies and the ballots, and shall report to the secretary the votes cast for each nominee for the office of Director, and the votes cast in favor of or against any question submitted to vote by ballot at the meeting.

ARTICLE IV.

DIRECTORS.

SECTION 1. *Number, Election, and Qualification.* The business and affairs of the Corporation shall be managed by a Board of Directors seventeen* in number, divided into three classes. The term of office of Directors of the

first, second and third class shall expire at the first, second and third annual meeting of stockholders, respectively, after their classification and election in 1961; and, at each annual meeting of stockholders thereafter. Directors chosen to succeed those whose terms expire at the time of such meeting shall be elected for a term of office to expire at the third annual meeting of stockholders after their election. The first and second classes shall consist of six Directors each, and the third class shall consist of five Directors.* Each Director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified. Directors need not be residents of the State of Delaware or stockholders of the Corporation. Additional Directors may be elected at such times and in such manner, and to hold office for such periods, as are prescribed by the provisions of Paragraph (9) of Article Fourth of the Certificate of Incorporation.

(* As amended November 3, 1966, effective February 17, 1967)

SECTION 2. *Meetings.* The annual meeting of the Board of Directors shall be held at the General Office of the Corporation in the State of Illinois, immediately following the annual meeting of the stockholders, or at such other time or place, either within or without the State of Delaware, as shall be determined by resolution of the Board of Directors. Annual meetings may be held without notice thereof.

Stated meetings of the Board of Directors may be held at such times and places, either within or without the State of Delaware, as shall be determined from time to time by resolution of the Board of Directors. Stated meetings may be held without notice thereof.

Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors, or the President, and shall be called by the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors, the President, or the Secretary on the written request of two Directors.* Special meetings of the Board

of Directors may be held at such times and places, either within or without the State of Delaware, as may be determined by the person calling the meeting. At least two days prior notice of any special meeting shall be given to each Director at his address as it appears on the books and records of the Corporation, by telegram, or by written notice delivered personally or by mail. If given by telegram, such notice shall be deemed to be delivered when the telegram is delivered, so addressed, to the telegraph company. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid.

(* As amended December 2, 1965.)

Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or any waiver of notice of such meeting.

SECTION 3. *Quorum.* One-third of the total number of Directors shall constitute a quorum for the transaction of business. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Certificate of Incorporation, or these By-Laws. If a quorum is not present, a majority of the Directors present may adjourn the meeting from time to time without further notice.

SECTION 4. *Compensation.* By the affirmative vote of a majority of the whole board, and irrespective of any personal interest of any of its members, the Board of Directors shall have authority to establish reasonable compensation of all Directors for services to the Corporation as Directors, officers or otherwise.*

(* As amended June 2, 1966.)

SECTION 5. *Vacancies.* Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the authorized number of Directors may be filled by a majority of the Directors then in office, though less than a quorum. The Directors so chosen shall hold office until the next annual election of the class for which each such Director has been chosen and until his successor is duly elected and qualified, unless sooner displaced. When one or more of the Directors shall resign from the Board of Directors effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office as herein provided in the filling of other vacancies. The provisions of this Section 5 shall not be applicable in respect of directorships arising by virtue of the provisions of Paragraph (9) of Article Fourth of the Certificate of Incorporation.

(* As amended July 2, 1965.)

SECTION 6. *Dissents.* Any Director who may have been absent from a meeting of the Board of Directors at which action on any matter was taken, or who may have dissented from the act or resolution by which the same was done, shall be entitled to cause his dissent to be entered at large on the books containing the minutes of the proceedings of the Directors at the time the same was done, or immediately after he has notice of the same.

ARTICLE V.

COMMITTEES.

SECTION 1. *Executive Committee.* The Board of Directors, by resolution passed by a majority of the whole board, may designate not more than eleven* nor less than two Directors to constitute an Executive Committee. Such designation shall include the Chairman of the Board

of Directors and the President. The Executive Committee shall elect a Secretary.

(* As amended November 3, 1966.)

To the extent permitted by law, the Certificate of Incorporation and these By-Laws, the Executive Committee shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation. During the intervals between the meetings of the Board of Directors, the Executive Committee shall advise with and aid the officers of the Corporation in all matters concerning its interests and the management of its business.

* SECTION 2. *Compensation Committee.* The Board of Directors, by resolution passed by a majority of the whole board, may designate not more than 7 nor less than 2 Directors to constitute a Compensation Committee. The Compensation Committee shall have authority to: (1) consult and advise with the Board of Directors, from time to time, in respect of the salaries of officers and other executive employees of the Corporation; (2) fix the salaries of all non-Director officers, agents and employees of the Corporation, in excess of such amount as the Board of Directors may from time to time determine; (3) grant stock options; and (4) administer any and all Stock Option Plans and Management Incentive Compensation Plans of the Corporation in accordance with the terms and provisions thereof.

(* As amended February 21, 1964.)

SECTION 3. *Auditing Committee.* The Board of Directors, by resolution passed by a majority of the whole Board, may designate not more than 7 nor less than 2 Directors to constitute an Auditing Committee. The Auditing Committee shall receive the audit reports, from time to time submitted by the public auditors employed to audit the books and accounts of the Corporation, and shall transmit the same to the Board of Directors with the Committee's recommendations and comments.

SECTION 4. *Special Committees.* The Board of Directors, by resolution passed by a majority of the whole board, may designate, from time to time, such special committees, consisting of two or more Directors, as it deems advisable.

SECTION 5. *Committee Procedure.* Each Committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may be otherwise provided by resolution of the Board of Directors, but the presence of at least a majority of the members of each Committee shall be necessary to constitute a quorum. Each Committee may act by resolution adopted at a meeting at which a quorum is present, provided, however, that, in the absence or disqualification of any member of any such Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(* As Amended September 5, 1963.)

SECTION 6. *Emergency Action.* The provisions of this Section 6 shall be effective only during an Emergency Period. Emergency Period shall mean that period of time beginning with any physical attack by a foreign power upon the continental United States and ending on the date specified in a resolution duly adopted by the Board of Directors.

During an Emergency Period—

a) any member of the Executive Committee may call a special meeting of the Executive Committee upon such notice as is reasonable under the then existing circumstances,
b) two members of the Executive Committee shall constitute a quorum of such committee,
c) the Executive Committee may exercise any and all powers of the Board of Directors in the manage-

ment of the business and affairs of the Corporation, including, without limitation, the power to:

i) confirm or rescind any resolution previously adopted by the Board of Directors,
ii) remove, for any reason, any officer or agent of the Corporation, and
iii) elect or appoint any or all officers and agents of the Corporation; and

d) the provisions of this Section 6 shall supersede any provision of these By-Laws which in any way conflicts with the provisions of this Section 6.

ARTICLE VI.

OFFICERS.

SECTION 1. *Officers.* The officers of the Corporation shall be chosen by the Board of Directors at each annual meeting, and may be chosen at any stated or special meeting, of the Board of Directors. The officers of the Corporation shall consist of a Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, a President, each of whom shall be chosen from among the Directors, one or more Vice Presidents as may be determined by the Board of Directors, a Secretary, a Treasurer, one or more Controllers as may be determined by the Board of Directors, a General Auditor, and such Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers, and Assistant Controllers, and such other officers and assistant officers as may be deemed necessary by the Board of Directors.* Any number of offices, other than the offices of President and Secretary, may be held by the same person. In its discretion, the Board of Directors may leave unfilled for any period as it may deem advisable any office except the offices of President, Secretary and Treasurer.

(* As amended December 2, 1965.)

SECTION 2. *Salaries of Officers.* Salaries of all non-Director officers, agents and employees of the Corporation, in excess of such amount as the Board of Directors may

determine from time to time, shall be fixed by the Board of Directors, or the Salary Committee thereof, and salaries not in excess of the amount so determined by the Board of Directors shall be fixed by the Chairman of the Board of Directors or the President; provided, however, that the salary of any officer, agent or employee who shall also be a member of the Board of Directors shall be fixed by the affirmative vote of a majority of the whole board.

SECTION 3. *Term of Office.* Except as otherwise provided in these By-Laws, the officers of the Corporation shall hold office until the annual meeting of the Directors next following their election, or until their successors are chosen and qualified.

SECTION 3-a. *The Chairman of the Board of Directors.* The Chairman of the Board of Directors shall preside at all meetings of the stockholders, the Board of Directors, and the Executive Committee. The Chairman of the Board of Directors shall be the chief executive officer of the Corporation and shall have general and active management of the business of the Corporation, and shall keep the Board of Directors and the Executive Committee fully informed and freely consult them concerning the business of the Corporation in his charge. The Chairman of the Board of Directors may sign and execute all instruments in the name of the Corporation.

SECTION 4. *The President.* In the absence of the Chairman of the Board of Directors, the President shall preside at all meetings of the stockholders, the Board of Directors, and the Executive Committee. Subject to the Board of Directors, the Executive Committee and the Chairman of the Board of Directors, the President shall have general charge of the operation and organization of the business of the Corporation. The President shall keep the Board of Directors, the Executive Committee, and the Chairman of the Board of Directors fully informed and freely consult them concerning the business of the Corporation in his charge. The President may sign and execute all instruments in the name of the Corporation.

(As amended May 2, 1968.)

Vice President and Assistant to the President.*

(* As amended November 3, 1966.)

SECTION 6. *Assistant Vice Presidents.* Each Assistant Vice President shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board of Directors, or the President.

SECTION 7. *Secretary.* The Secretary shall (1) attend all meetings of the Corporation and the Board of Directors and record all the proceedings thereof in books to be kept for that purpose; and shall perform like duties for the Committees of the Board of Directors when required; (2) give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors in accordance with the provisions of these By-Laws, or as required by law; (3) have custody of the corporate records and of the seal of the Corporation, and affix, or cause to be affixed, the seal of the Corporation to all instruments which the Board of Directors shall have authorized to be executed under seal; and (4) have such other powers and perform such other duties as may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board of Directors, or the President.

SECTION 8. *Assistant Secretaries.* Each Assistant Secretary shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board of Directors, the President, or the Secretary.

SECTION 9. *Treasurer.* Under the direction of the Financial Vice President, if any, the Treasurer shall perform all duties incident to the office of Treasurer, and shall have such powers and perform such other duties as may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board of Directors, the President, or the Financial Vice President.

SECTION 10. *Assistant Treasurers.* Each Assistant Treasurer shall have such powers and shall perform such duties a may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board

of Directors, the President, the Financial Vice President, or the Treasurer.

SECTION 11. *Controllers.* The Board of Directors may designate one of the Controllers as Corporate Controller. Each Controller shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board of Directors, the President, or the Financial Vice President.

SECTION 12. *Assistant Controllers.* Each Assistant Controller shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board of Directors, the President, the Financial Vice President or the Controllers.

SECTION 13. *General Auditor.* The General Auditor shall have such powers and shall perform such duties as may be assigned to him by the Board of Directors, the Committees thereof, the Chairman of the Board of Directors, the President, or the Financial Vice President.

ARTICLE VII.

REMOVAL OF OFFICERS AND AGENTS; VACANCIES.

SECTION 1. *Removal.* Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 2. *Vacancies.* If the office of any officer or agent shall become vacant for any reason, the Board of Directors, at any meeting, may choose a successor to hold office for the unexpired term in respect of which such vacancy occurred.

ARTICLE VIII.

CERTIFICATES OF STOCK.

SECTION 1. *Issuance of Certificates.* Every holder of stock in the Corporation shall be entitled to have a cer-

tificate, signed by, or in the name of the Corporation by, the Chairman of the Board of Directors, the President, any Executive Vice President, the Financial Vice President, the Vice President-Corporate Services, or any Senior Vice President, and the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation. Where such certificate is signed (1) by a transfer agent or an assistant transfer agent or (2) by a transfer clerk acting on behalf of the Corporation and a registrar, the signature of the Chairman of the Board of Directors, the President, any Executive Vice President, the Financial Vice President, the Vice President-Corporate Services, or any Senior Vice President, and Secretary or Assistant Secretary may be facsimile. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall for any reason cease to be such officer or officers of the Corporation before such certificate or certificates have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the Corporation.

SECTION 2. *Transfers.* Transfers of shares shall be made only on the stock transfer books of the Corporation by the person named in the certificate or by his attorney, lawfully constituted in writing, and upon surrender for cancellation of the certificate for such shares. The Corporation shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

SECTION 3. *Transfer Agent and Registrar.* The Board of Directors may appoint one or more transfer agents and one or more registrars for all classes or for any particular class of shares of the Corporation and

may require certificates representing such shares to bear the signature of a transfer agent and of a registrar.

SECTION 4. *Closing of Transfer Books and Fixing Record Date.* The Board of Directors may close the stock transfer books of the Corporation for a period not exceeding 50 days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect or for a period of not exceeding 50 days in connection with obtaining the consent of stockholders for any purpose. In lieu of closing the stock transfer books as aforesaid, the Board of Directors may fix in advance a date, not exceeding 50 days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and in such case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

SECTION 5. *Lost Certificate.* Any person claiming a certificate for shares of the Corporation to be lost or destroyed shall make an affidavit or affirmation of that fact and advertise the same in such manner as the Board of Directors may require, and shall if the Board of Directors so require give the Corporation a bond of indemnity, in form and in amount and with one or more sure-

ties satisfactory to the Board of Directors, whereupon, in the discretion of the Board of Directors, a new certificate may be issued of the same tenor having the same or a different number and for the same number of shares as the one alleged to be lost or destroyed; provided, that a bond of indemnity satisfactory to the transfer agents and registrars shall, if required by said transfer agents and registrars, or either of them, also be given by the person claiming the loss or destruction of same certificate for shares of the Corporation.

ARTICLE IX.

Books and Records.

The Corporation shall prepare and keep, in duplicate, a stock ledger containing the names and addresses of the stockholders, and the number and class of shares held by them, respectively. The duplicate stock ledger shall, at all times, during the usual hours for business, be open to the examination of every stockholder at the principal office of the Corporation in the State of Delaware. The original stock ledger shall be kept at the office of the Transfer Agent of the Corporation in the State of Illinois. The original or duplicate stock ledger shall be the only evidence as to who are the stockholders entitled to (1) examine the voting list referred to in Section 4 of Article III of these By-Laws, or the books of the Corporation, or (2) vote in person or by proxy at any meeting of the stockholders.

ARTICLE X.

Fiscal Year.

The fiscal year of the Corporation shall begin the day following the Saturday nearest October 31 in each year.

ARTICLE XI.

Waiver of Notice.

Whenever any notice whatever is required to be given under the provisions of law, the Certificate of Incorpora-

tion, or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE XII.

Action Without a Meeting.

Unless otherwise restricted by law or the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any Committee thereof may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board or of such Committee as the case may be, and such written consent is filed with the minutes of proceedings of the Board or Committee.

ARTICLE XIII.

Amendments.

Any of these By-Laws may be altered, amended, or repealed and new By-Laws may be adopted at any meeting of the Board of Directors; provided, however, that no change in the time or place for the holding of the annual meeting of stockholders for the election of Directors shall be made within sixty days next before the day on which such meeting is to be held. In case of any change in such time or place, notice thereof shall be given to each stockholder, in person or by letter mailed to his last known post-office address, at least twenty days before the meeting is held.

Certificate

I, _____, hereby certify that I am an Assistant Secretary of ARMOUR AND COMPANY, a Delaware corporation; that, as such officer, I have custody of access to the corporate seal and corporate records of said corporation; that the foregoing, consisting of sixteen

numbered pages, is a true and correct copy of the By-Laws of said corporation with all amendments to date; and that said By-Laws are in full force and effect.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the corporate seal of said corporation this ..... day of ....., 19.....

.....

Assistant Secretary.

(Corporate Seal)

EXHIBIT F

GENERAL HOST CORPORATION
245 PARK AVENUE
NEW YORK, N. Y. 10017

To the Directors of
Armour and Company

(212) 661-5300

December 20, 1968

Gentlemen:

On December 12, 1968 Armour and Company ("Armour") announced plans for an exchange offer with the stockholders of Williams Brothers Company ("Williams") which is engaged in the business of owning and operating a common carrier petroleum products pipeline system, and in engineering and constructing pipelines and related facilities for the oil and gas industry. The announcement stated that Armour would exchange 1⅓ shares of its common stock for each of Williams approximately 2.9 million common shares outstanding. The proposed exchange would result in the issuance of approximately 3.9 million Armour common shares, representing 69% of its presently outstanding shares.

At the present time General Host Corporation owns 1,002,500 shares of the common stock of Armour, representing approximately 16.5% of the shares outstanding. In view of the magnitude of the proposed exchange we believe that the stockholders of Armour as well as other interested parties should receive assurance that the management of Armour has carefully evaluated Williams and concluded that the aforesaid exchange will be in the best interests of Armour. Accordingly, we request that you provide us with the answers to the following questions as soon as possible, but in any event not later than the completion of any preliminary proxy material for filing with the Securities and Exchange Commission:

I. *Is the unusual accounting treatment followed by Williams with regard to deferred income taxes adequately disclosed in their financial statements?*

Note 4 to the consolidated financial statements contained in Williams 1967 annual report to stock-

holders states that the "present value" (or discounting) method of providing for deferred income taxes has been adopted and "under this treatment, (1967) net income is $2,783,000 greater ($1.06 per share) than would be indicated under methods which do not use present value measurements." The note further states that "a provision for deferred income tax applicable to the pipeline system has been made of $1,308,000 (the present value of $4,147,000) the amount which, when compounded at 6% per annum until the "turnaround date", will accumulate the amount of income tax deferred and due at later dates . . ."

This gives rise to the following questions:

1) In using a 6% discount, is Williams assuming it will earn 6% after taxes and therefore 12% before taxes?
2) If Williams is using a 12% discount rate before taxes, has its financial statement disclosure been misleading in not revealing this fact?
3) If Williams is using a 12% discount rate before taxes, is this appropriate in view of:
   a. Its present earnings rate on the $291,907,000 investment in the pipe line system and related assets?
   b. The generally accepted accounting principle that future profits should not be anticipated? (See paragraphs 65 and 66 of proposed APB Opinion on earnings per share dated November 6, 1968 for a recent discussion of the principle).

II. *Is Williams continued accounting for deferred taxes on a discounted basis with respect to asset additions subsequent to September 26, 1966 in violation of APB Opinion # 10 (paragraph 6) which states that "except for applications existing on the exposure date of this Opinion (September 26, 1966) with respect to transactions consummated prior to*

that date, deferred taxes should not be accounted for on a discounted basis."?

III. *If Williams' earnings are put on a comparable basis with those of Armour with respect to deferred tax accounting, to what extent will the Armour stockholders' earnings per share be diluted as a result of the proposed exchange offer?*

IV. *What is the allowable rate base for the Williams pipe line system and is Williams earning its maximum allowable rate of return on its depreciated cost of $291,907,000?*

V. *What is the depreciated original cost of the Williams pipe line system and related assets, and is there any possibility that the ICC will prescribe such cost as the allowable rate base?*

VI. *What competition does the Williams Pipe Line Company face?*

In the Williams December 31, 1967 financial statements included in the ACF Industries proxy statement dated August 23, 1968, Williams reported the following:

"In September 1966, a group of major oil companies announced a proposal to construct a common carrier products line from the Texas-Louisiana Gulf Coast to the Chicago area. Williams Brothers understands that modifications of this proposal are still under active consideration, but it is unable to state whether the project will be carried out, or if so, what will be the route or constitution of the line, or the manner in which it will affect the operations of the System."

Is Williams *now* able to state whether or not competition from this pipe line will have an adverse effect on Williams operation?

VII. *Does the depreciation rate on the Williams pipe line system take into account possible obsolescence in view of the fact it is only a 12 inch pipe line?*

VIII. *Is the high-risk Williams construction business compatible with the operations of Armour and Company?*

During 1967 approximately 45% of Williams revenues were derived from the business of constructing pipe lines for the oil and gas industry in foreign countries. In the ACF proxy statement mentioned above, Williams states that:

"The construction business in which Williams Brothers is engaged is highly competitive and is subject to unusual hazards. In most cases, contracts for major projects are awarded by competitive bidding on a lump sum or unit price basis, subject to adjustment only for particular contingencies stated in the contract. Depending on the contingency adjustment provisions which Williams Brothers can obtain in particular cases, such contracts may subject it to a variety of risks over which is [sic] has no control, including, but not limited to, increases in wage rates, inclement weather, natural disaster, exchange controls, currency fluctuation and possible political and economic disturbances."

In the ACF proxy statement Williams reported delays in a major contract which may produce a loss and which if delayed beyond the Spring of 1969, could produce a substantial loss. What is the present status of this contract?

We are continuing to study available information on Williams and we may have additional questions in the future.

Yours very truly,

GENERAL HOST CORPORATION

/s/ Harris J. Ashton
HARRIS J. ASHTON
President

EXHIBIT G

[Armour Emblem]

ARMOUR AND COMPANY
CHICAGO, ILLINOIS 60690

JAMES G. SPEER
Vice President and Treasurer

November 12, 1968

Mr. Harry J. Volk,
President
Union Bank
P.O. Box 3100 - Terminal Annex
Los Angeles, California 90054

Dear Mr. Volk:

I am pleased to attach hereto a copy of a press release that Armour issued on October 31, which may not have previously come to your attention.

If you have any questions, please feel free to call me on Area Code 312, 943-3100.

Sincerely,

/s/ J. G. Speer
Vice President and Treasurer

CHEMICAL, FOODS AND INDUSTRIAL PRODUCTS

NEWS from [Armour Emblem]

401 North Wabash • Chicago Illinois • (312) 943-3100
• John Schell • Director Public Relations

ARMOUR STATEMENT

CHICAGO, Oct. 31—Due to rumors in the financial community and newspaper reports attributed to General Host officials regarding their intentions toward Armour, Armour today applied to the U. S. District Court in Chicago for authorization to clarify the intentions of General Host Corporation for the purpose of securing maximum information for Armour stockholders.

After a discussion with the Court as to procedural points, Armour and Company requested and was granted permission to withdraw the application at this time.

This action has no bearing whatever upon the ultimate question of whether control of Armour by General Host would be unlawful. In the opinion of counsel for Armour, including Sullivan & Cromwell of New York, Arnold & Porter of Washington, D.C. and Winston, Strawn, Smith & Patterson of Chicago control of Armour by General Host would violate the principles of the Packers' Consent Decree of 1920 and the general anti-trust laws.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

AFFIDAVIT OF JAMES H. KELLEY IN OPPOSITION TO GOVERNMENT'S PETITION FOR AN INJUNCTION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

JAMES H. KELLEY, being first duly sworn, deposes and says:

1. He is a member of the firm of Bergson, Borkland, Margolis and Adler, 888 17th Street, N. W., Washington, D. C. 20006, attorneys for General Host Corporation.

2. He has examined reports filed by Armour and Company with the Securities and Exchange Commission in Washington, D. C. and those parts of the record in this proceeding available in the Clerk's Office of this Court. Unless otherwise indicated, this affidavit is based on those sources.

3. Armour and Company (hereinafter Armour) was incorporated in 1900 under the laws of the State of Illinois and in 1960 became a Delaware corporation by merger into a subsidiary. It has 6,049,790 shares of common stock outstanding.

4. The Board of Directors of Armour has seventeen members divided into three classes. Each director has a three year term of office. Six directors come due for election in 1969, five in 1970, and six in 1971. Voting for directors is cumulative pursuant to the Certificate of Incorporation and By-laws.

5. The By-laws permit an Executive Committee of from two to eleven directors including the Chairman and the President of the Company. During the past year, the Executive Committee consisted of the Chairman and ten directors.

6. The chief executive officer of the company is the Chairman of the Board of Directors, Mr. William Wood Prince (hereafter "Mr. Prince"). In that capacity, Mr. Prince has full operating control of Armour and directs the activities of its officers, agents and employees.

7. In addition to that position, Mr. Prince is a co-trustee and beneficiary of several trusts, including the Frederick H. Prince Trusts of 1932 and 1947 and the Frederick H. Prince Testamentary Trust. Mr. James F. Donovan is also co-trustee of those trusts.

8. The Frederick H. Prince Trust of 1932 owns 100% of the stock or other share capital of several corporations, including the F. H. Prince Co., Inc., a Maine corporation licensed to do business in Illinois.

9. Mr. Prince is, and for several years last past has been, President and a director of F. H. Prince & Co., Inc. Mr. Donovan is and has been the Vice President and Director of that company.

10. The F. H. Prince & Co., Inc. in turn owns 100% of the stock of the Union Stockyard and Transit Co., a public stockyard market company registered under the Packers and Stockyards Act, which operates the Chicago public stockyards and associated activities, including restaurants, hotels, etc. Mr. Prince was President of the Union Stockyard and Transit Co. prior to 1957 when he resigned and became President of Armour.

11. Mr. Charles Potter succeeded Mr. Prince as President of the Stockyard company. He also serves as a director and member of the Executive Committee of Armour and of F. H. Prince Co., Inc.

12. Mr. James F. Donovan is presently Chairman of the Stockyard company. He is also co-trustee of the F. H. Prince Trust, a Vice President and director of F. H. Prince & Co. and a director and member of the Executive Committee of Armour.

13. Mr. Prince and Mr. Donovan also serve in various other capacities to control various business entities owned directly or indirectly by F. H. Prince Co., Inc., including the Central Manufacturing District Trust and the Produce Terminal Corp.

14. The Prince trusts, and the corporate and other entities owned or controlled by the Prince trusts, also own substantial stock interests in Armour & Company.

(a) The Armour and Company Notice of Annual Meeting of Stockholders of February 16, 1968 (copy of which is attached as Exhibit A) states that:

(i) F. H. Prince and Co., Inc. owned directly or through subsidiaries 356,400 shares of Armour and Company common stock.

(ii) In a report for the calendar month ending December 31, 1968, the Frederick Henry Prince Trust (1932) disclosed the following breakdown of the Armour and Company stockholdings owned and controlled by the trust:

Name of Company	Shares of Armour & Co.
F. H. Prince & Co., Inc.	144,000
Central Manufacturing District [1]	130,100
Produce Terminal Corporation [2]	66,000
Union Stockyard & Transit Co.[2]	12,600
International Amphitheatre Co.[3]	3,700

(iii) The Frederick Henry Prince Trust (1947), the Frederick Henry Prince Testamentary Trust and the Abbie Norman Prince Trust, of which James F. Donovan and William Wood Prince are Trustees, owned 54,600; 7,000 and 18,000 shares, respectively, of Armour and Company common stock.

15. In addition to the holdings of the Prince trusts, Mr. William Wood Prince personally owns 55,072 shares

[1] 100% of whose outstanding certificates of beneficial interest is owned by F. H. Prince & Co., Inc.

[2] 100% owned by F. H. Prince & Co., Inc.

[3] 100% of International Amphitheatre Company's outstanding shares are owned by Union Stockyard and Transit Company.

of stock and the officers and directors of Armour as a group own directly 274,838 shares of Armour common stock. The officers and directors indirectly own at least an additional 58,000 shares of Armour common stock.

16. The total number of shares of common stock of Armour controlled by or through the Prince trusts and the officers and directors of Armour amount to approximately 13% of the outstanding common stock of Armour.

17. Mr. Donovan, Mr. Potter and Mr. Prince, together with officers of Armour who are subordinates of Mr. Prince and who are also directors of the company, constitute a majority of the Board of Directors.

18. The attached Exhibit B diagrams in chart form the stock and trust interests described above whereby Mr. Prince, Mr. Donovan and Mr. Potter actively control the operations and activities of Armour while at the same time directly or indirectly owning and controlling capital stock and other interests in a public stockyard company and in corporations operating restaurants, *inter alia*.

19. Paragraph Second of the Decree and Consents entered in *United States* v. *Swift and Company, et al.* provides that Armour and Company and the other corporate and individual defendants are:

> perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, . . . [provision applicable to individual defendants omitted] . . . ; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company . . . .

20. The joint control by Mr. Prince and his associates of both Armour and the public stockyard market company which operates the Chicago stockyards has continued in effect at least since 1957, when Mr. Prince became President of Armour. Affiant has reason to believe that the Department of Justice was fully aware of such joint control during the pendency of prior proceedings in this Court from 1958 through 1960. Moreover, the Department has long been familiar with the operations of F. H. Prince and Company, having opposed in 1920 the divestiture by Armour and Company to F. H. Prince and Company of its stock interests in numerous stockyard companies; though the Department filed no objection to Armour's divestiture of its 19% interest in the Chicago Stockyards Company to Frederick H. Prince personally.

21. To the best of my knowledge and belief, no proceeding has been instituted on the theory that the interest of the persons presently controlling Armour in a public stockyards market company constitutes an interest by Armour therein, thereby violating the above-quoted paragraph of the Decree. Rather, the parties appear consistently to have construed the paragraphs of the Decree here relevant as applicable only to the interests and operations of the defendants themselves, not to the interests and operations of those stockholders of Armour who are in actual control of that company.

/s/ James H. Kelley
JAMES H. KELLEY

[Affidavit Omitted in Printing]

EXHIBIT A

Important

Approximately 81% of the stockholders of Armour and Company own 100 or fewer shares. This makes it important that each stockholder, whether he owns one or many shares, send in his proxy, especially if he is not able to attend the meeting.

Notice of annual meeting of stockholders of Armour and Company to be held February 16, 1968

To the Holders of Common Stock of Armour and Company:

The annual meeting of stockholders will be held in the Assembly Hall Auditorium in The Prudential Building, Prudential Plaza, 130 East Randolph Street, Chicago, Illinois, on Friday, February 16, 1968, at ten o'clock in the forenoon, for the election of six directors and the approval of the appointment of independent auditors for the 1968 fiscal year.

Holders of Common Stock of record at the close of business on January 2, 1968, will be entitled to vote at the meeting. For a period of at least 10 days prior to the date of the meeting, a complete list of the stockholders entitled to vote at the meeting will be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours at the office of the Company, 401 North Wabash Avenue, Chicago, Illinois.

You are earnestly requested to sign, date and mail the accompanying proxy in the enclosed self-addressed, stamped envelope, whether or not you expect to attend the meeting in person. You may revoke your proxy for

any reason at any time prior to the voting thereof. Your cooperation is respectfully solicited.

By order of the Board of Directors.

LOUIS R. MILLER,
Secretary.

Chicago, Illinois, January 12, 1968.

PROXY STATEMENT

The enclosed proxy is solicited on behalf of the management, and the cost of the proxy solicitation will be borne by the Company. In addition to the solicitation of proxies by the use of the mails, Georgeson & Co. of New York City has been retained to aid in the solicitation at a cost estimated to be $5,000 and certain officers and other regular employes of the Company may devote part of their time to such solicitation by telegraph, telephone or personal calls. Proxies may be revoked at any time prior to the voting thereof.

As of January 1, 1968, the Company had outstanding 7,543,345 shares of Common Stock, each share being entitled to one vote. Each holder of record at the close of business on January 2, 1968, will be entitled to vote at the meeting, and in the election of directors will have the right to cumulate his votes and distribute them among one or more of the directors to be elected in the manner authorized by the laws of Delaware.

ELECTION OF DIRECTORS

Six directors are to be elected at this meeting, for terms of three years each. The proxies given pursuant to this solicitation will be voted, and may be cumulated in the manner authorized by the laws of Delaware, for the following nominees: E. TAYLOR CHEWNING, DAVID L. DUENSING, JOHN M. HOERNER, CHARLES R. OREM, WILLIAM WOOD PRINCE and J. HARRIS WARD. Each of the nominees, except Mr. Duensing, Mr. Orem and Mr. Ward, is now a director

of the Company. Mr. Duensing has been employed by the Company since 1946; he was elected Senior Operating Vice President on June 7, 1967, prior to which he was Group Vice President in charge of the Grocery Products Division. Mr. Orem has been employed by the Company since 1964; he was elected a Vice President and Corporate Controller on October 1, 1964, Financial Vice President on December 2, 1965, and Senior Administrative and Financial Vice President on June 7, 1967; prior to coming to the Company, Mr. Orem was Financial Vice President and a director of Pickands Mather & Co., Cleveland, Ohio. For more than the past five years, Mr. Ward has served as Chairman and Chief Executive Officer of Commonwealth Edison Company, Chicago, Illinois. If any of said nominees is not a candidate for election as a director at the meeting, an event which the management does not anticipate, the proxies will be voted (subject to cumulation as aforesaid) for a substitute nominee or nominees and for the other nominees above named.

INFORMATION CONCERNING NOMINEES AND DIRECTORS

Name	*Principal Occupation and Business of Employer**	*Director Since*	*Equity Securities of the Company Beneficially Owned Dec. 4 1967**
Nominees for Terms Expiring at Annual Meeting in 1971			
E. Taylor Chewning	President, The United Clay Products Company, Washington, D.C. (Manufacturers of clay products)	1956	269 shares of Common† $1,400 4½% Debentures
David L. Duensing	Senior Operating Vice President, Armour and Company	—	333 shares of Common
John M. Hoerner	President, Armour Agricultural Chemical Company, a subsidiary of the Company	1963	3,064 shares of Common 26 shares of $4.75 Preferred $10,000 4½% Debentures
Charles R. Orem	Senior Administrative and Financial Vice President, Armour and Company	—	200 shares of Common $3,000 4½% Debentures
William Wood Prince**	President and Chief Executive Officer, Armour and Company	1950	55,072 shares of Common†† 65 shares of $4.75 Preferred $26,000 4½% Debentures
J. Harris Ward	Chairman and Chief Executive Officer, Commonwealth Edison Company (Electric power)	—	None
Directors Whose Terms Expire at Annual Meeting in 1969			
Modestus R. Bauer**	Personal Investments, Long Beach, California	1956	150,040 shares of Common $700,000 4½% Debentures
James R. Leavell**	Retired (formerly President of Continental Illinois National Bank and Trust Company of Chicago)	1933	500 shares of Common $4,400 4½% Debentures
Charles S. Potter**	President, The Union Stock Yard & Transit Company of Chicago (Operates Chicago Stock Yards)	1960	178 shares of Common†† $700 4½% Debentures
Milton Steinbach**	Investment Banker, Wertheim & Co., New York, N. Y. (Investment Banking)	1954	18,354 shares of Common†††
A. Thomas Taylor**	Chairman of the Board and Chief Executive Officer, International Packers Limited (World-wide marketing, cattle ranching and food processing)	1966	530 shares of Common 130 shares of $4.75 Preferred
Perry A. White	President, Baldwin-Lima-Hamilton Corporation, a subsidiary of the Company	1965	2,226 shares of Common 416 shares of $4.75 Preferred
Directors Whose Terms Expire at Annual Meeting in 1970			
Chris L. Christensen	Personal Investments, Tulsa, Oklahoma	1951	1,400 shares of Common
James F. Donovan**	Trustee, Frederick Henry Prince Trusts, Chicago, Illinois (Managing wholly-owned subsidiaries which operate stock yards, build, sell and lease industrial real estate and engage in other related activities)	1954	2,030 shares of Common‡ †††
Homer J. Livingston**	Chairman of the Board, The First National Bank of Chicago, Chicago, Illinois (Banking)	1956	148 shares of Common $1,000 4½% Debentures
George A. Rentschler**	Personal Investment, New York, N. Y.	1953	13,715 shares of Common 9,581 shares of $4.75 Preferred
Edward W. Wilson**	Retired (formerly Vice Chairman of the Board, Armour and Company)	1959	12,079 shares of Common $24,000 4½% Debentures

* As furnished by each nominee or director.

** Member of the Executive Committee of the Company.

† The management is advised that on December 4, 1967, Continental Clay Products Company, of which E. Taylor Chewning is President and, together with his immediate family, is the beneficial owner of 70% of the capital stock, owned 400 shares of the Company's Common Stock and $2,100 of the Company's 4½% Convertible Subordinated Debentures.

†† The management is advised that on December 4, 1967, the Frederick Henry Prince Trust (1932), of which James F. Donovan and William Wood Prince are Trustees and William Wood Prince is one of several income beneficiaries, owned all the outstanding shares of F. H. Prince & Co., Inc., an investment company, of which James F. Donovan and William Wood Prince are officers and directors and Charles S. Potter is a director, which owned, directly or through subsidiaries, 356,400 shares of the Company's common stock; that the Frederick Henry Prince Trust (1947), the Frederick Henry Prince Testamentary Trust, and the Abbie Norman Prince Trust, of which James F. Donovan and William Wood Prince are Trustees, owned 54,600, 7,000 and 18,000 shares, respectively, of the Company's Common Stock, and the Frederick Henry Prince Trust (1947) owned $400,000 of the Company's 4½% Convertible Subordinated Debentures.

††† The management is advised that on December 4, 1967, Wertheim & Co., in which Milton Steinbach is a partner, owned 40,967 shares of the Company's Common Stock. Mr. Steinbach's wife owned 13,390 shares of Common and 100 shares of $4.75 Preferred Stock; Mr. Steinbach disclaims any beneficial interest in such shares.

‡ The management is advised that on December 4, 1967, Mr. Donovan's wife and children owned 430 and 1,600 shares, respectively, of the Company's Common Stock; Mr. Donovan disclaims any beneficial interest in such shares.

APPROVAL OF INDEPENDENT AUDITORS

The Board of Directors has appointed, subject to approval by the stockholders at this meeting, the firm of Price Waterhouse & Co. as the independent auditors to examine the accounts of the Company for the 1968 fiscal year. This firm has audited the Company's accounts for many years and is one of the largest and best known firms of independent accountants.

REMUNERATION AND OTHER TRANSACTIONS WITH MANAGEMENT AND OTHERS

Remuneration

The following is a statement of all direct remuneration, for services in all capacities, paid by the Company and its subsidiaries in respect of the last fiscal year to: (1) each director, and each of the three highest-paid officers, of the Company whose aggregate direct remuneration exceeded $30,000, and (2) all directors and officers of the Company as a group.

Name of individual or identity of group	*Capacities in which remuneration was received*	*Aggregate direct cash remuneration*
William Wood Prince	Chairman of the Board, President and Chief Executive Officer (1)	$ 125,000
Edward J. McAdams	President (2)	125,000
Edward W. Wilson	Vice Chairman of the Board (3)	125,000
John M. Hoerner	Group Vice President	85,000
Perry A. White	Group Vice President	75,000
George A. Rentschler	Director, Chairman of Executive Committee of Baldwin-Lima-Hamilton Corporation, Employment Contract	56,600
All Directors and Officers as a Group (46 persons, including the above)	Directors, Members of Executive Committee, Officers	1,968,629

(1) Elected President and vacated office of Chairman of the Board August 12, 1967.

(2) Resigned as President August 12, 1967, and retired October 28, 1967.

(3) Resigned as Vice Chairman of the Board and retired October 28, 1967.

Under the Company's Management Incentive Plan, incentive payments to eligible employes are to be based upon their accomplishment of pre-specified objectives, as appraised by the committee which administers the plan. Incentive payments for outstanding performance may range up to 50% of basic salary. Total payments under the plan for any fiscal year, if they exceed $250,000, must be within the lesser of (a) the amount by which Incentive Plan Earnings, less the pre-tax earnings equivalent of the Preferred Stock dividend requirement, exceed 12% of (i) stockholders' equity plus certain deferred credits, less (ii) the par value of the outstanding Preferred Stock plus a portion of the investment in foreign subsidiaries, or (b) 6% of Incentive Plan Earnings. Incentive Plan Earnings are defined to mean the consolidated pre-tax earnings of the Company, exclusive of foreign subsidiaries, capital gains and losses and the amount made available by the plan. All officers of the Company (including William Wood Prince, John M. Hoerner and Perry A. White, whose payments shall be established by the Board of Directors) and other employes of certain salary classifications are eligible for participation under the plan. Incentive compensation in excess of $5,000 may be paid, at the option of the committee, in cash, in installments or as deferred payment(s), or in the form of the Company's Common Stock or 4½% Convertible Subordinated Debentures. No amounts became payable under the plan to any of the above-named individuals for the 1967 fiscal year.

In 1964, the Company entered into a contract with William Wood Prince whereby he agreed to serve the Company in an executive capacity for successive one year periods beginning January 1, 1965, unless terminated by either party on 30 days' notice, at a salary of $125,000 per year and, subject to specified conditions, deferred compensation at the rate of $1,041.66 per month for a number of months equal to twice the number of months of his employment under the contract.

As a result of the merger of Baldwin-Lima-Hamilton Corporation (BLH) into the Company on July 2, 1965, the Company assumed a 1958 agreement between BLH

and George A. Rentschler under which he became entitled, when his full time employment with BLH ceased in 1962, to receive compensation in the amount of $35,000 per year for life, in consideration of his rendering consulting and advisory services on a part-time basis and refraining from rendering services to a competitor of BLH. This amount is included in the above table, and the amount there shown is in addition to retirement payments of $18,305 per year which he is entitled to receive under the BLH contributory pension plan.

Upon his retirement, Edward W. Wilson agreed to assist in the completion of certain studies and projects on which he was working at the time of his retirement and will receive remuneration at an annual rate of $25,000 until such completion. The agreement is terminable by either party on 30 days' notice.

Pension and Retirement Plans

Most salaried employes (not including members of the Board of Directors or Executive Committee, as such) entering salaried service prior to age 55 participate in either or both the Salaried Employes' Pension Plan (established in 1911) and the 1957 Retirement Plan. Most salaried employes of BLH participate in its separate contributory plan, under which the benefits do not exceed those of the 1911 plan. No employe will receive benefits under more than one plan for the same years of service. The 1957 plan does not apply to any employe entering salaried service after April 30, 1961.

The 1911 plan provides for the payment of pensions from a trust fund to which the participating employes make regular contributions from their salaries. The Company from time to time makes contributions to the plan, in such amounts and at such times as may be determined by the Board of Directors, but no part thereof is paid or set aside for the account or benefit of any individual person.

Annual benefits are computed on the basis of 1% of the average salary paid during the 5 consecutive years of highest salary for each year of continuous service,

plus 4 10 of 1% of such average salary in excess of $10,000 for each year of continuous service. It is anticipated that, upon retirement, William Wood Prince and John M. Hoerner will, and Edward W. Wilson and Edward J. McAdams now do, receive benefits under the 1911 plan. The following tabulation is illustrative of the annual benefits payable upon retirement to employes in certain specified salary classifications and with various lengths of accredited service.

Annual benefits for indicated years of accredited service

Average annual salary during 10 consecutive years of highest salary	10 years	15 years	20 years	25 years	30 years	35 years
$ 10,000	$ 1,000	$ 1,500	$ 2,000	$ 2,500	$ 3,000	$ 3,500
20,000	2,400	3,600	4,800	6,000	7,200	8,400
30,000	3,800	5,700	7,600	9,500	11,400	13,300
40,000	5,200	7,800	10,400	13,000	15,600	18,200
50,000	6,600	9,900	13,200	16,500	19,800	23,100
100,000	13,600	20,400	27,200	34,000	40,800	47,600
125,000	17,100	25,700	34,200	42,800	51,400	59,900

Perry A. White participates only in the RAH contributory plan.

Employes make no contributions to the 1957 plan, no fund is established thereby, and the retirement payments provided thereunder are paid by the Company only as they accrue. Annual retirement payments are computed on the basis of 7-10 of 1% of the average salary paid during the 10 consecutive years of highest salary for each year of continuous service. It is anticipated that, upon retirement, William Wood Prince and John M. Hoerner will receive benefits under the 1957 plan. The following tabulation is illustrative of the annual amounts payable upon retirement to employes in certain specified salary classifications and with various lengths of accredited services.

Average annual salary during 10 consecutive years of highest salary	Annual retirement payments for indicated years of accredited service			
	10 years	15 years	20 years	25 years
$ 10,000	$ 700	$ 1,050	$ 1,400	$ 1,750
20,000	1,400	2,100	2,800	3,500
30,000	2,100	3,150	4,200	5,250
40,000	2,800	4,200	5,600	7,000
50,000	3,500	5,250	7,000	8,750
60,000	4,200	6,300	8,400	10,500
70,000	4,900	7,350	9,800	12,250
80,000	5,600	8,400	11,200	14,000
90,000	6,300	9,450	12,600	15,750
100,000	7,000	10,500	14,000	17,500
120,000	8,400	12,600	16,800	21,000

Stock Options

Options Granted

No stock options have been granted to directors, as such, nor, since the beginning of the last fiscal year to and including December 31, 1967, to any of the above-named individuals. During such period, stock options for an aggregate of 14,300 shares of the Common Stock of the Company were granted to other officers of the Company. The options were granted on November 2, and November 6, 1967, each at an option price of $34.38 per share, being 100% of the last sale price of the Common Stock on the New York Stock Exchange on the respective dates of grant.

The options were Qualified Stock Options expiring five years from the date of grant, are subject to earlier termination in certain events, and are subject to appropriate adjustment in the event of merger, consolidation, reclassification of shares, stock dividends and the like. In consideration for the granting of the options, each optionee has agreed in writing to remain in the employ of the Company until the earlier of two years or his normal retirement date, but in no event less than one year after the granting date.

Options Exercised

On December 22, 1966, Perry A. White exercised an option covering the purchase of 2,418 shares of the Company's Common Stock at $26.93 per share, on which date

the last sale price on the New York Stock Exchange was $33.125.

Other Transactions

Since the beginning of the last fiscal year, the Company purchased, at market prices, securities from or through Wertheim & Co., in which firm Milton Steinbach, a director of the Company, is a partner. Brokerage and dealer commissions paid to Wertheim & Co. during such period, charged at minimum New York Stock Exchange rates, were $52,237.

The Company has for many years made purchases in the ordinary course of business from International Packers Limited (IPL) of which A. Thomas Taylor, a director of the Company, is Chairman of the Board and Chief Executive Officer. These purchases have been principally of imported meats, and since the beginning of the last fiscal year have constituted less than 2% of the total business of each company. It is anticipated that these purchases will continue. The Company owns approximately 27% of the outstanding common stock, and $2,203,000 principal amount of 5½% Convertible Subordinated Debentures, of IPL.

Since the beginning of the last fiscal year, the Company, as lessee of phosphate rock lands from Crawford Real Estate Development Co. (Crawford), made payments of $800,000 to Crawford for phosphate rock mined by the Company from the leased lands. James F. Donovan and Charles S. Potter, directors of the Company, are directors and officers of Crawford, which is indirectly owned by the Frederick Henry Prince Trust (1932). The Company will continue to make payments for phosphate rock as it is mined from the leased lands.

The Company has long used established lines of credit with numerous banks including The First National Bank of Chicago, of which Homer J. Livingston, a director of the Company, is Chairman of the Board and Chief Executive Officer. From the beginning of the last fiscal year through December 31, 1967, this bank received interest from the Company, at the prime commercial rate, aggregating $193,900 on loans in the maximum amount at any

one-time outstanding of $11,000,000. During the same period the Company, as lessee of motor vehicles and other equipment, paid rentals of $4,663,341 to the trustee of an equipment trust in which the bank has a 50% interest, and rentals of $196,406 for equipment leased directly from the bank. It is anticipated that these relationships will be continued.

The Company has for many years made purchases in the ordinary course of business from Chemetron Corporation, of which Charles J. Haines, a director of the Company, is Chairman of the Board. These purchases have been principally of plant equipment and industrial gases, and since the beginning of the last fiscal year have constituted less than 1% of the total business of each company. It is anticipated that these purchases will continue.

By order of the Board of Directors.

LOUIS R. MILLER,
Secretary.

Chicago, Illinois, January 12, 1968.

Exh B

PRESENT CONTROL OF ARMOUR

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable JULIUS J. HOFFMAN

Cause No. 69 C 113 Date: 1-30-69

Title of Cause U.S.A. ex rel. Lafayette, et al.

Judgment & Order

Brief Statement of Motion

Findings of Fact Conclusions of Law

The clerk of this court is requested to mail notice to counsel of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate list must be supplied).

Name and Address of Moving Counsel

Representing

Name and Address of other counsel entitled to notice and names of parties they represent.

Ward [illegible]
Counsel will not have to appear for hearing on [illegible]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

[Caption Omitted in Printing]

FINDINGS OF FACT

1. General Host Corporation was incorporated under the laws of New York in 1911 as the General Baking Company and adopted its present name in April, 1967. Its headquarters are located in New York, New York.

2. General Host through its divisions and wholly-owned subsidiaries, engages in the manufacture and sale of several types of food products, including bread, crackers, candy and frozen convenience foods. In addition, it operates coffee shops and restaurants in the Los Angeles, California area; operates inns, lodges, restaurants and other facilities in Yellowstone National Park and Everglades National Park; and operates approximately 380 convenience stores. (Government Petition, paragraph 4.)

3. On February 27, 1920, a consent decree was entered in this case against 135 defendants: the so-called "Big Five" of the meat packing industry, including Armour & Co., 80 corporate subsidiaries and 50 individuals.

4. Paragraph fourth of the decree, upon which the Government now relies, enjoined "the corporation defendants and each of them . . ., either directly or indirectly, by themselves, or through their officers, directors, agents, or servants [from] engaging in or carrying on, either by concert of action or otherwise . . ." the manufacturing, jobbing, selling, transporting, distributing or otherwise dealing in certain specified products or commodities, including bread, wafers, crackers and biscuits. The decree also enjoined the defendants from owning stock in any corporation engaged in the operations of the designated businesses. Paragraph fourth makes no reference to the interests or operations of non-defendant stockholders of the corporate defendants.

5. General Host Corporation was not a party to the action, did not consent to the decree, and at the time of

the decree, did not own stock in Armour & Co. General Host is not alleged to have participated in any violations of the antitrust laws charged in this action.

6. In August, 1968, General Host acquired from Gulf & Western Industries, Inc., 150,000 shares of common stock of Armour. In October, 1968, General Host acquired an additional 600,000 shares of Armour common stock from Gulf & Western Industries, Inc., and in November and December purchased an additional 252,500 shares on the open market. General Host's present holdings of Armour common stock represent approximately 16.5% of Armour's outstanding shares. (Government Petition, paragraphs 5-6.)

7. General Host's present holdings of Armour stock do not give it control of Armour and are sufficient only to enable it to obtain one and possibly two positions on Armour's seventeen man Board of Directors. (Ashton Affidavit, paragraph 7.)

8. On January 20, 1969, the shareholders of General Host authorized an offer to be made to the holders of the common stock of Armour whereby General Host would exchange a combination of General Host debentures and warrants for Armour common stock. The company plans to institute the exchange offer on or after January 28, 1969. (Ashton Affidavit, paragraph 9.)

9. General Host's objective in proposing its exchange offer is to obtain a majority of the outstanding shares of Armour voting stock. A condition of the exchange offer is that General Host will reject all Armour shares tendered unless sufficient shares are tendered to increase General Host's percentage holdings of outstanding Armour voting stock to an amount in excess of 50%. (Ashton Affidavit, paragraphs 8-9.)

10. Armour's Certificate of Incorporation and By-Laws provide that the Board of Directors shall consist of 17 persons, divided into 3 classes, groups of 6 and 5 being elected in successive years, sometimes referred to as a staggered Board of Directors. Each Armour director has a 3 year term of office. 6 directors are due to be elected in 1969, 5 in 1970, and 6 in 1971. (Ashton Affidavit, paragraphs 10-13.)

11. Only 6 of Armour's present 17 directors are standing for election at the forthcoming 1969 Annual Meeting. Therefore, even if every presently outstanding share of Armour stock were tendered to General Host, it does not appear presently possible for General Host to elect more than 6 directors out of 17 at the 1969 Annual Meeting. (Ashton Affidavit, paragraphs 10-13.)

12. The Armour By-Laws also provide for cumulative voting. Thus, it is unlikely that General Host's exchange offer will result in the acquition of sufficient voting shares to enable it to elect more than 4 or 5 directors at the 1969 Annual Meeting. (Ashton Affidavit, paragraphs 11-13.)

13. Armour's By-Laws also provide for an Executive Committee which is elected by the directors and which presently consists of 11 of the 17 directors, including the Chairman and the President. This Executive Committee may exercise most of the powers of the Board of Directors in the management of the business affairs of Armour. Thus, even if General Host were to elect 6 directors at the 1969 Annual Meeting, it could be foreclosed from any representation on the Executive Committee of the Board. (Ashton Affidavit, paragraphs 13-14.)

14. So long as the present management retains a majority position on the Board of Directors and the Executive Committee, the present management may continue to control the operations of Armour.

15. The present exchange offer will not result in any merger or consolidation of General Host and Armour. Specific approval of a merger or consolidation is required by a two-thirds vote of the stockholders of both corporations. The vote must be taken pursuant to notice and meeting of stockholders in accordance with New York and Delaware law. No steps have been instituted to seek such approval. (Ashton Affidavit, paragraph 15.)

16. An injunction against the proposed exchange offer would cause irreparable injury to General Host Corporation. (Ashton Affidavit, paragraphs 18-24.)

17. Armour filed, but later withdrew, a petition in this court seeking to enjoin General Host's purchase of stock from Armour shareholders. Armour has appeared

at the hearing of this petition in support of the position of the Government. (Transcript, pp. 6-8; 21-25.)

18. Armour's present management has vigorously opposed General Host's proposed exchange offer; has proposed acquisition of other corporations in exchange for Armour common stock which would have the effect of diluting General Host's stock interest; has sought to interfere with General Host's relations with banks; and has placed full page advertisements in various newspapers criticizing the proposed exchange transaction. (Ashton Affidavit, paragraphs 18-24.)

19. The Government contends that because Armour is prohibited from engaging in the food businesses listed in the decree, control of Armour by a company engaged in one or more of those businesses would also violate the decree.

20. The decree has not been construed to limit the business activities of non-defendant Armour stockholders nor to charge Armour with engaging in the businesses in which its controlling stockholders are engaged.

21. The interpretation of the decree for which the Government contends goes beyond the plain language of the decree. It cannot be considered a logical extension of the decree.

22. The equity bill which commenced this proceeding and the decree are summarized in *United States* v. *Swift & Co., et al.*, 189 F.Supp. 885 (N.D. Ill. 1960).

23. The consent decree was obviously the product, in principal part, of extensive negotiation between the defendants and the Government and is a detailed and carefully worded decree.

24. The principal reason for the provisions in issue was to restrict the corporate defendants in the use of the vast power they had acquired to extend their power into other markets. The situation which the Government challenges here, however, is substantially different from that with which the 1920 decree was concerned. General Host is not a large meat packer extending its monopolistic grasp toward the rest of the food industry and through the use of its already established distributing facilities, superior financial resources and other means

making a dominant position felt, resulting in a restraint of trade by squeezing out present or potential competitors. Rather, General Host, a wholly separate corporate entity, has acquired some shares of Armour stock and evinced an interest in acquiring additional shares.

25. The theory of the Government's petition is that paragraph fourth of the decree, which enjoins Armour and the other corporate defendants from engaging in or carrying on the manufacturing, et cetera, of the listed products and commodities and from owning stock in a corporation so engaged, also prohibits Armour's controlling stockholders from so engaging in business in the listed commodities. (Transcript, pp. 13-18.)

26. Paragraph fourth of the decree expressly applies only to the "corporation defendants". The portions of the decree relied upon by the Government do not restrain the activities or interests of non-defendant stockholders of the corporate defendants.

27. The omission of stockholders or successors and assigns from the reach of paragraph fourth evidences an intent that only the corporate defendants and those acting on their behalf be enjoined by that paragraph.

CONCLUSIONS OF LAW

1. The 1920 decree does not prohibit non-defendant owners of stock in meat packing companies from engaging in businesses prohibited to the meat packers themselves by the decree.

2. General Host is neither a party, privy to a party, nor in active concert or participation with a party to the consent decree entered in this case in 1920 and, therefore, is not bound by its provisions.

3. General Host is not charged with violation of the antitrust laws nor with participation in the offenses charged by the 1920 Bill in Equity which commenced this proceeding.

4. The 1920 decree does not prohibit control of Armour & Co. by General Host.

5. No violation of the 1920 decree is threatened or imminent.

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1. The petition for injunction does not set forth any grounds upon which relief could be granted against General Motor Corporation in this case.

2. The ends of justice do not merit that General Motor Corporation be made a party to this action pursuant to [illegible]

Dated this 30th day of January, 1970.

ENTER:

/s/ Julius J. Hoffman
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 68 C 612

Entered Jan. 30, 1969

UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT AND COMPANY, ET AL., RESPONDENTS

JUDGMENT ORDER

After full hearing of the petition for injunction filed by the Government in this proceeding on January 20, 1969, due consideration of the petition, the memoranda and affidavits in support of and in opposition to the petition, the record of the hearing held on January 27, 1969, and the findings of fact and conclusions of law heretofore adopted by this court, it is this 30th day of January, 1969

ORDERED that the Government's request that summons be issued pursuant to 15 U.S.C. § 5 commanding General Host Corporation to appear and answer the allegations contained in the petition is denied; and it is

ORDERED that the Government's request for a temporary restraining order and an injunction against General Host Corporation be denied; and it is

ORDERED that the Government's petition for injunction is denied.

Enter

/s/ Julius J. Hoffman
United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Caption Omitted in Printing

Transcript of proceedings had at the hearing of the above-entitled cause before the HON. JULIUS J. HOFFMAN, one of the judges of said court, sitting in his courtroom in the United States Courthouse at Chicago, Illinois on the 21st day of January, 1969, at the hour of 10:00 o'clock a.m.

Present:

Mr. John T. Chapman,
Chief, Antitrust Office,
Antitrust Division,

and

Miss Irma Twinamen and
Mr. Peter H. Gruenau,
Attorneys, Department of Justice,
Washington, D.C.,

Mr. Robert E. Hunter, Jr. and
Mr. Charles W. Burns,
135 South LaSalle Street,
Chicago, Illinois, and
Mr. Herbert A. Bergson and
Mr. James Kelly,
Washington, D.C., and
Mr. Lewis Brown,
New York, New York,
on behalf of General Host Corporation.

Mr. Jacob Hyman and
Mr. Ira H. Haimes,
Pittsburgh, Pennsylvania,
on behalf of Vendo Company.

THE CLERK: 58 C 1613, United States of America v. Swift and Company, et al. Petition for an intervention against General Host Corporation.

MR. SARBAUGH: My name is John Sarbaugh, Antitrust Division, Chicago Office. May I present Miss Edna Lingreen and Mr. Peter Goldberg, Attorneys with the Antitrust Office in Washington. Miss Lingreen is a member of the District of Columbia Bar. Mr. Goldberg is a member of the Florida Bar.

With the court's permission I would ask leave that they be permitted to appear here to represent the government in the petition before the court.

THE COURT: Leave will be granted.

MR. JENNER: If your Honor please, may I present to you Mr. Herbert A. Berkson, a distinguished member of the Washington, D.C. Bar.

THE COURT: Mr. Berkson.

MR. JENNER: And Mr. Edwin McAmis, a distinguished member of the New York Bar.

I am personally acquainted with both gentlemen and certify to their ability and capacity and to their integrity, and I move, your Honor, that they be granted leave to appear as counsel for General Host Corporation in this matter.

THE COURT: That motion will be allowed.

MR. JENNER: Mr. Bosk and I will be associated with them.

THE COURT: All right.

This is the Government's motion. I will hear from you. Tell me your name again.

MISS LINGREEN: Eleanor Lingreen.

THE COURT: Miss Lingreen, I will hear you.

MISS LINGREEN: Your Honor, the Government has filed this petition for temporary restraining order and an injunction against General Host to prevent its acquiring control of Armour and Company. We come in under the statutes which are enforced in this action against Armour and other meat packers which permanently enjoined them from engaging in any way in dealing in certain specified practices which include brand names items and such [illegible] which General Host is engaged in dealing in.

General Host is one of the large bakeries in the country. It owns and operates restaurants in some of the national parks. It has a chain of convenience food stores and therefore is very clearly engaged in dealing in some of the products that are listed in this decree.

General Host in August of 1968 bought some stock of Armour and Company. It bought 150,000 shares initially, then later it bought 750,000 shares. We inquired of General Host concerning its plans in this matter and we were told at that time that the only thing that General Host was—

THE COURT: Why did you inquire?

MISS LINGREEN: Because we thought it would be a violation of the decree if General Host was, in fact, going for control of Armour, because since Armour is barred from engaging in dealing in these products, for it to be acquired by a company which deals in the products would mean that Armour was being backed into a violation of the decree.

At that time General Host indicated that it—

THE COURT: Has Armour been acquired?

MISS LINGREEN: It has not been acquired and that is why we are here, your Honor, asking for a restraining order to prevent it from occurring, because General Host's stockholders yesterday approved a tender offer under which General Host has the right to acquire and will acquire any and all of the stock of Armour that is tendered with one sole reservation. It has reserved the right to turn down any stock if less than 51 per cent is offered, but it doesn't say that it will turn it down, and if more than 51 per cent is offered my understanding is that it will take over Armour and Company.

THE COURT: You know, Miss Lingreen, you are playing sort of second fiddle here. Some months ago—I read that figuratively, of course, that expression—a law firm came in saying he represented Armour and Company and he relying on the 1930 decree and perhaps in part on the Sedan decision modification of it, said something like this to me exactly, but he said something like you are saying here today, and for a variety of reasons, I did? I guess the principal one was he thought I was

going to deny his motion, he withdrew the motion. I hadn't heard from it until now when this petition is before me. I know that you must have the benefit of what was said on that occasion because the lawyer who presented you for admission to this bar was in attendance; silently in attendance.

MISS LINGREEN: I have read the transcript, your Honor.

THE COURT: Oh.

MISS LINGREEN: I am aware of what was said on that occasion.

THE COURT: So my mind is still open. I will hear you.

I entered no order. There is no order that you are up against here. The lawyer withdrew his motion. It was Mr. Earl Jinkinson—

MISS LINGREEN: Yes, your Honor, I understand.

THE COURT: —who spent a good part of his professional life in the position that your associate here now holds. In fact, he was counsel in chief on the other side before me, and tried the case for three and a half months, [fol. 51] fourteen weeks of trial, but maybe he thought Armour and Company was more solvent than his other clients. I don't know. At any rate he came in on the other side. My impression is—at least as far as I know—his appearance is still on file in that case.

This is made under the 1958 case in this court, isn't it?

MISS LINGREEN: Yes, it is, your Honor, because what is involved here is the violation of the decree.

THE COURT: An asserted violation of the decree.

MISS LINGREEN: That is, indeed, the issue, yes, and what we are seeking—

THE COURT: General Hoat was not a party to that case, was it?

MISS LINGREEN: No, it was not a party, and the Government proposes bringing in General Hoat under Section 5 of the Sherman Act, as a matter of fact.

THE COURT: You have a motion here, a petition. I will hear you fully. Present anything you would like here. This is your time. I am obligated to hear you.

fol. 9 MISS LINGREEN: We do have a proposed order, your Honor, to bring General Host in and make it a party under the decree. If I may hand it up to your Honor—

(Document handed to the Court.)

MISS LINGREEN: If I may say so—

THE COURT: Say anything you like. There are others who are going to speak after you, so you use all the time you want right now.

MISS LINGREEN: I am well aware of that. Thank you.

THE COURT: I take it this isn't a stipulated order.

MISS LINGREEN: It isn't. No, it is not.

But under the Sherman Act additional parties may be brought in in order to—

THE COURT: On proper showing.

MISS LINGREEN: Yes.

THE COURT: You may make your showing.

MISS LINGREEN: All right. I will endeavor to do so.

General Host has been engaged in a course of conduct [illegible] which now is moving toward acquiring control of Armour, and if I may review that briefly, your Honor, in August it initially acquired 150,000 shares of Armour stock, then 750,000 shares. At that time General Host represented that it had not concluded—that its interest was more than simply investment in Armour and as such we did not see that that was a violation of the decree because it would not be in control of Armour.

General Host acquired further shares and now holds [illegible] per cent of the total outstanding shares of Armour stock, something over a million shares, and in December it advised that it did intend to go for control of Armour and we advised it that in the Government's view—

THE COURT: How do you define control? What does a company do when it controls another?

MISS LINGREEN: It runs its business affairs. It may put in its own slate of directors.

THE COURT: Is there any director of General Host on the board of Armour and Company at this time?

MISS LINGREEN: Not at this time, your Honor. [fol. 11] General Host's tender offer is going out—it is going to be going out very shortly—and it, I believe, expects to have a return on that offer before Armour's annual meeting which is scheduled for February 21, 1969. At that time it may very well be that General Host will be able to achieve control of Armour by having enough votes at the annual meeting, because undoubtedly in the stock that is tendered is a proxy giving General Host the authority to vote the stock of Armour, and it seems to the Government that it is appropriate, like in a Section 7 matter where two companies are agreeing to merge, or one to acquire the other, if the Government knows about it in advance, we try to ask for preliminary injunction to prevent the agreement from being effectuated because it is more effective to do that than to stand by and wait until after the agreement is achieved.

THE COURT: I will go this far: If it comes to pass that General Host—is it a company or is it a corporation?

MISS LINGREEN: A corporation, your Honor.

THE COURT: —Corporation acquires this large [fol. 12] amount of stock and as a result thereof places men on the board of Armour and Company, and they thereafter engage in the prohibited businesses or enterprises set out in the decree, we will deal appropriately with an application by the Government.

I will let you finish, but—

MISS LINGREEN: May I ask a question to make sure I understand, your Honor?

THE COURT: I don't think that there is a showing in this petition that requires me to do anything yet. There is no law against buying stock, acquiring stock per se.

MISS LINGREEN: But if General Host acquires enough stock so that it can be managing the affairs of Armour, certainly the effect is that Armour will—

THE COURT: What do you think will happen to Armour and Company?

I don't know. I don't care whether General Host moves in and takes all the directorships. If it had enough stock

to elect a complete board, would Armour and Company fly in the face of a decree merely because General Host happens to be engaged in a business that is prohibited [fol. 13] by the terms of the decree?

MISS LINGREEN: Your Honor, if corporate structure can make the difference whether or not there is a violation of the decree, then it seems to me that—

THE COURT: Have you any authority that requires me to do what you want me to do in the circumstances which you describe to me here?

MISS LINGREEN: We rely on the decree, your Honor, which forbids Armour directly or indirectly from engaging in the prohibited business, and if Armour—

THE COURT: You are a little early in any event, but I will hear you out.

MISS LINGREEN: Are we early because General Host has not yet acquired—

THE COURT: I am not here to answer questions; I am here to ask them.

MISS LINGREEN: I am trying to figure out if we are early.

THE COURT: You came all of the way from Washington, you ought to be able to answer that.

MISS LINGREEN: If we are early now, I would [fol. 14] like to know how long we should wait. If we wait until General Host has indeed acquired the stock of Armour and then come to your Honor for relief before that have an opportunity to vote the stock, that is the only time it seems to me that we would be able to get preventive relief rather than to stand by and wait until acquired and voted and put in control of Armour, then the violation has occurred and it seems to the Government that it was more appropriate here to ask for preventive relief rather than to stand by and wait until General Host has indeed acquired Armour, put Armour into business forbidden to it, and then bring a contempt action.

THE COURT: As you may surmise, I am familiar with the decree.

MISS LINGREEN: I know you are, your Honor.

THE COURT: I sat through day-by-day hearings, for fourteen weeks, also having done the necessary research and chamber's work in order to prepare and file the memorandum of decision which I suspect you may have read.

MISS LINGREEN: Indeed I have, your Honor.

[fol. 15] THE COURT: Now your petition and its prayer are grounded, as you suggest, upon an interpretation of the 1920 decree, but I think it goes beyond the terms of that decree, and I don't think that it was intended by the parties to it as a logical extension of that decree.

The decree, by the way, is summarized in United States against Swift and Company, 189 F.Sup. 885, Northern District of Illinois; 1960; and even in that abbreviated form its description requires two printed pages. I mention that because it is clear to me that the decree was drafted with great care and after lengthy consideration of each of the several provisions. Nowhere does that decree prohibit the type of conduct challenged by the Government in this petition. The decree very clearly enjoined the defendants to the original case who were parties to it from, for example, holding a controlling interest in any concern handling or dealing in the food commodities listed therein, but the converse is not prohibited, that is, the decree does not forbid any other concern, any other company engaged in handling or deal-

[fol. 16] ing in food commodities, from securing a controlling interest in one of the defendants.

If I am mistaken about that, I will give you a chance to point out in the decree whether or not I am mistaken.

MISS LINGREEN: Your Honor, paragraph 4 of the decree, if I may read it—

THE COURT: I want to know the language you rely on.

MISS LINGREEN: "That the corporate defendants and each of them be and they are hereby perpetually enjoined and restrained in the United States from either directly or indirectly, by themselves or through their officers, directors, agents or servants, engaging in or carrying on either by concert of action or otherwise

either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the following products or commodities—", —with certain exceptions which are not material here.

(fol. 17) THE COURT: If you rely on that language, certainly that situation hasn't come to pass nor is it certain or reasonably to be anticipated that it will come to pass.

I say as I remarked a moment ago the converse is not true. Now if it does come to pass that men do come onto the board of Armour and Company and through this—oh, for want of a better word,—this subsidiary or associated company proceed to violate the provisions of the decree, I would restrain them on that showing if the petition were properly addressed to me, a point that I reserve for the moment. That is what I meant when I said earlier that I think you are a little early.

MISS LINGREEN: Our purpose, of course, is to prevent the action which we believe is—

THE COURT: Mere acquisition of the stock doesn't mean that Armour and Company of necessity will engage in running super markets or retail butcher stores. If they do, you will get your relief.

MISS LINGREEN: Your Honor, if General Host acquires control of Armour and puts its own people on the (fol. 18) board of Armour and Armour is engaged in the meat business that it is now in, General Host is engaged in the bakery-restaurant-food store business that it is now in, then in the government's view that means that Armour through this board of directors who are General Host's men is indirectly dealing in the foodstuff products.

THE COURT: You are engaging in a lot of ifs, and I return your suggestion with an if, and I say if it comes to pass that they actually, Armour and Company—Armour and Company is one of the defendants here in this case—if Armour and Company actually violates the terms of the decree according to its provisions, if the matter is properly presented to me and I am the proper person to hear it, I will deal appropriately with the application.

MISS LINGREEN: I understand that your Honor considers that this is premature—Now I wish—

THE COURT: Oh, that is only one of the points. I say premature and when I say that, I am not even remotely certain that what you predict will come to pass. [fol. 19] MISS LINGREEN: This is certainly the intention.

THE COURT: I can't imagine—here I was introduced to two lawyers representing this company, General Host. I assume they are from New York.

MR. JENNER: Mr. Berkson is from the District of Columbia and Mr. McAmis is from New York City.

THE COURT: You don't think lawyers would come here from New York and Washington, that type of lawyer, mature lawyers that they appear to be—you don't think they would be unmindful of what Armour and Company may do or might do or could do or can't do?

You seem nonplused, do I make myself clear?

If, indeed, what you predict or are alarmed about does come to pass, I don't issue injunctions here loosely. I am not permitted to, not only by the cases in this circuit but I speak generally. Injunctive relief is not to be based on mere speculation.

MISS LINGREEN: Of course your Honor is correct and for that reason the government waited to ask for [fol. 20] this injunctive relief until after the General Host stockholders had authorized the issuance of the tender offer lest we come in here—

THE COURT: There is nothing unusual about that. There is nothing violative of the decree. I suppose anybody who has a portfolio of securities almost every month gets a circular as a stockholder indicating that some company, some individual is trying to acquire stock and invites tenders. There is nothing illegal about that.

MISS LINGREEN: No, your Honor, and because there is nothing illegal about the tender offer, we are not asking your Honor to cite General Host for contempt, we are asking for an injunction against or preventing—

THE COURT: I wouldn't think you would be that stupid.

MISS LINGREEN: No, we are not. We are not, because we agree that there is nothing illegal about the tender offer, but because there is a threatened violation of the decree, because the purpose of the tender offer is to acquire control of Armour, because General Host already has 16 and a half percent which in some circum-
[fol. 21] stances is enough for control—

THE COURT: Let me say this as a purely academic matter: If those who now control Armour—and I use the word in the legal sense—are deposed and another moves in, it is not certain that that is violative of the decree. And if they do, we will deal appropriately with such a violation.

I will hear from anyone else here who wants to be heard on this petition. Does any other party to this case desire to be heard? Does General Host wish to be heard?

MR. JENNER: General Host does not wish to be heard, your Honor.

THE COURT: Mr. Hodson?

MR. HODSON: Mr. Reuben and I represent Armour in this matter, your Honor. I would like to say we support the government's position, first.

Secondly, it seems to us that the decree does now cover this situation for this reason: As I understand, the basic purpose of the decree was to compel the defendants to dispose of their grocery business, among other things,
[fol. 22] and to forever separate the meat and grocery business.

Now here we have a situation, your Honor—

THE COURT: You fought awfully hard to make me change that, didn't you?

MR. HODSON: Oh, we did, your Honor, twice—not with you twice but we did try to change it. That is what our problem is partly.

THE COURT: I will change that word "make" to "persuade" me.

MR. HODSON: Now we have a company here concededly not a party to this decree at this time which is engaged in the grocery business. It has stated in its proxy statement and in its S-1 filed with the Securities

and Exchange Commission that its intention is to take over Armour.

Now it seems to us, your Honor, that the very attempt to take over Armour while they own this grocery business, the very attempt to do so is an effort to frustrate, to emasculate this decree.

THE COURT: They won't. They won't. Don't be [fol. 23] alarmed. As long as I am here, they won't. As long as this case is on my calendar, I repeat what I said to counsel for the government, that when, as and if that comes to pass, we can deal appropriately with it.

Conceivably this company may have the kind of purpose which the government thinks it may have and in which view you now join.

By the way, did they get your client back? Did you get your client back? There was another lawyer in here for Armour.

MR. HODSON: That is right, your Honor. There was another one. I suppose due to the fact that we had been in the modification proceedings before your Honor—

By the way, Mr. Harsh would be here since he handled most of that except he is tied up on another matter.

—they asked us to represent them in this portion of the case.

THE COURT: Oh, it was precisely in this aspect of the case that the other lawyer appeared.

MR. HODSON: That is correct, but that was, I believe, on the petition of Armour; this is on the petition [fol. 24] of the government.

THE COURT: Oh, no, that was a petition by Armour and Company.

MR. HODSON: That is what I say, that was a petition by Armour and this is a petition by the government.

THE COURT: Yes, dealing with the actual and contemplated activities of General Host Corporation.

MR. HODSON: That is right.

If I may return to my original point, your Honor—

THE COURT: Yes.

MR. HODSON: The difficulty here is that it is not to us a case of waiting until they take over the board of Armour. If they are engaged in this business now, in

our opinion when we proceed to take all the steps involved in electing directors, as long as they are in this grocery business we are subjecting ourselves to possible contempt. When they get control here, and they are still engaged in the grocery business, we are putting together a combination of two corporations, one of which is in the meat [fol. 25] business, one of which is in the grocery business.

Now I submit, your Honor, that that is simply circumventing the decree.

If we ourselves form a holding company and formed a corporation to engage in the grocery business, I think there would be no question this decree would apply to that conduct on our part. Now this accomplishes the same result. By means of this tender offer they get control of Armour and you have a combination, a unit, an economic unit engaged in both businesses, and that circumvents and frustrates the decree.

Now that is our position, your Honor, and we therefore support the government in the position that this tender offer should be enjoined since their obvious purpose is to obtain control of Armour.

THE COURT: Does anyone else desire to be heard?

MR. JENNER: General Host doesn't wish to be respond, your Honor, other than to advise your Honor that this is a staggered board and neither at the next annual meeting or the one following would any such alleged control be obtained.

[fol. 26] THE COURT: I see some lawyers in the courtroom who have been interested in this case, the old case; I would be glad to hear from anyone.

By the way, does the government wish to comment on anything that has been said here by Mr. Hodson?

MISS LINGREEN: No, your Honor.

THE COURT: Or anything else?

MISS LINGREEN: No.

THE COURT: I will give you one final opportunity to be heard.

MISS LINGREEN: All that I want to say is that as to your Honor's reference to the fact that there are other attorneys in the courtroom who represented the meat packers at the time of the modification hearing, of course they are interested now because if it turns out—

THE COURT: They have said so, they are here, but only Mr. Hodson has spoken up.

MISS LINGREEN: If it turns out that the government is wrong in believing that the decree would be violated by a combination of Armour and General Host—

THE COURT: Let me interrupt you, if I may, Miss [fol. 27] Lingreen: Suppose it does happen that this company acquires stock control and thereafter because of a dominant position on the board of directors proceeds to engage in business activities prohibited under the decree; don't you think your office would get very busy very fast?

MISS LINGREEN: I can only respond, your Honor, that we have been busy now to try to prevent that from occurring.

THE COURT: If you are sincere in coming in here, and I believe you are, you should come in, but there is a vast difference between your deciding that it is your professional responsibility to come in here and my having the right to enjoin this company. I just don't believe that I have that right and it hasn't been demonstrated to me that I have. I have spent a lot of time on this since your papers were sent in yesterday afternoon, although I think certainly you must have understood my position in advance. Your associate was here in court, as I say, when Armour and Company through other counsel filed if not precisely the same kind of motion one [fol. 28] similar to it.

MISS LINGREEN: Well, of course I do—

THE COURT: This can't come as a surprise to you.

MISS LINGREEN: Certainly it makes a difference whether it is Armour or the government asking for enforcement of the decree. When Mr. Jinkinson came in, that was one of the defendants asking for enforcement, and the government has a responsibility here to ask the court to enforce it.

THE COURT: That same defendant is here through Mr. Hodson today adopting your position and sharing your argument, agreeing with your argument.

MISS LINGREEN: Yes, your Honor, but the government's position would not be any different if Armour

were a willing partner to General Host. Whether it is willing or unwilling shouldn't make any difference in whether the decree may be violated.

THE COURT: They wanted very much to get into these forbidden lines and tried to persuade me, I repeat, for fourteen weeks that they should be, that there had [fol. 29] been a change in conditions. And if it develops that through the activities of General Host Corporation, Armour and Company legally gets into it, if that is possible, something I have grave misgivings about—if it develops that they do get into that business, the present stockholders who now control Armour and Company will reap the benefits of these grocery store profits that they wanted so much to get into.

MISS LINGREEN: Those, of course, do include General Host among the stockholders.

THE COURT: What do you say?

MISS LINGREEN: They do include General Host among the stockholders with 16½ percent of the stock. With 16½ percent of the stock, I think General Host may be the largest stockholder.

THE COURT: There is no law against that.

MISS LINGREEN: No. We are not suggesting that there is, short of control.

THE COURT: I can tell you and I don't have to point out to you, you probably had more cases than I have and I have had many, but there are many large corpora- [fol. 30] tions who control the stock of other corporations sometimes just to see to it that they are supplied with the merchandise they sell. The greatest merchandising institution in the country controls by stockholdership many companies just in order to be certain that they will have the furniture to deliver to their retail stores or whatever the product is.

MISS LINGREEN: But those companies then engage in the business of—

THE COURT: Yes, there is in those cases, I grant you, no element of a possible violation of the decree. But Armour and Company's present stockholders would benefit if the lawyers for General Host and the management of General Host are able to persuade a court who has

jurisdiction of the matter that there is no violation of the decree. The present stockholders of Armour would profit by it because they would be getting profits from lines of business that they weren't previously permitted to engage in.

MISS LINGREEN: Yes, if this kind of upstream reorganization is not a violation of the decree, well, then, the modification hearings of 1960 perhaps would not have [fol. 31] been necessary because the defendant meat packers could simply have been acquired by somebody who was a holding company who had other subsidiaries engaged in the prohibited products.

[fol. 32] THE COURT: I express no view about that suggestion. I think I had better make some observations here so that they can be the basis for compliance with the rule.

This is a petition for an injunction and in such circumstances the court is obligated to make findings of fact and conclusions of law. I don't mean in making these observations to say that these are all of the findings, but included in the findings which I shall ask counsel for General Host to prepare—since you are here and I usually ask the party who prevails in this kind of a situation to prepare proposed findings of fact—I will assist you, gentlemen of the General Host side, by making these observations of record.

The government has filed this petition for an injunction against General Host Corporation, and I quote from it when I say "in order to prevent and restrain violation of the decree entered by the Supreme Court of the District of Columbia on February 27, 1920 in Equity Cause No. 37623, which cause was transferred to this court by order dated January 15, 1958."

[fol. 33] The original decree was entered against 135 defendants, the so-called Big Five of the meat packing industry, which included Armour and Company, 80 corporate subsidiaries of those five companies, and 50 of their officers and directors.

The proceeding in this court in 1958 involved six of the original defendants. It involved really more than that,

I might say, as there were some smaller companies who were given leave to intervene, as I recall it.

That is true, isn't it, Mr. United States Attorney? Do you know? Do you remember? You weren't in the case.

MR. SARBAUGH: I wasn't in the case, your Honor. I do not know.

THE COURT: But I know that Mr. Trienens was in the case for the smaller companies supporting the government position. I don't observe here in the notice that his clients have been notified nor does it appear that he as attorney of record has been notified.

General Host Corporation, described by the government as a New York corporation doing business in the [fol. 34] State of New York, was not a party to either action.

The petition before the court and the memorandum submitted in support thereof alleged that General Host through its divisions and wholly-owned subsidiaries engage in the business of manufacturing, jobbing, selling, distributing or otherwise dealing in certain food products or commodities. The decree perpetually enjoined and restrained Armour and Company from dealing in a number of the same food products.

The government charges that since August, 1968 General Host has initiated and pursued a plan to acquire control of Armour by purchasing shares of Armour's common stock; that it now holds approximately 16.5 percent of Armour's outstanding common stock; that on January 20th, 1969 the shareholders of General Host authorized a so-called exchange offer to be made to the holders of Armour common stock and that General Host has stated that it may accept all shares of Armour common stock tendered pursuant to the offer; that control of Armour [fol. 35] by General Host is imminent and that such control will result in violation of the decree entered in this cause "by causing Armour to be engaged in activities prohibited to it by the decree."

The government prays that this court order summons to issue pursuant to 15 U.S.C. Section 5 commanding General Host to appear and answer the allegations contained in this petition; that a temporary restraining

order be issued enjoining and restraining General Host from directly or indirectly acquiring or taking any action to acquire additional shares of stock in Armour pending a hearing before this court; and that an injunction be issued enjoining and restraining General Host from directly or indirectly acquiring or taking any action to acquire additional shares of stock in Armour and from any action to exercise control over or to influence the business affairs of Armour as long as General Host is engaged in businesses dealing in products listed in the decree of February 27th, 1920.

[fol. 36] In its memorandum in support of the petition, the Government asserts correctly that the 1920 decree perpetually enjoined Armour and Company among others from dealing in a number of food products and commodities, promoting any capital stock or any other interest in any concern which deals in any of those products, from operating or conducting any retail meat markets and from dealing in or owning any interest in a corporation which deals in fresh milk and cream.

According to the Government, General Host deals with many of those products.

The Government asserts further that General Host is engaged in a course of action to gain control of Armour through stock purchases.

With these allegations as background, the Government contends that control of Armour by General Host, which it believes to be imminent, would violate the decree and "it is the Government's contention that the language of the 1920 decree which forbids Armour from directly or indirectly dealing in certain products means that control of Armour by a company which deals in any of those [fol. 37] products would violate the decree."

The Government's prayer for relief as set forth in this petition will be denied. The petition and its prayer are grounded upon an interpretation of the 1920 decree which not only goes beyond the terms of that decree but also was not in the Court's view intended by any of the parties to it as a logical extension of that decree.

The decree is summarized in United States v. Swift and Company, 189 F.Sup. 885, Northern District of Illi-

nois, 1960, and even in that abbreviated form its description requires nearly two printed pages.

It is clear, as I said earlier here today, that the decree was drafted with great care and after lengthy consideration of each of its several provisions. Nowhere does that decree prohibit the type of conduct challenged by the Government in this petition. The decree very clearly enjoined the defendants who were parties to it from, for example, holding a controlling interest in any concern, handling or dealing in the food commodities listed therein, but the converse is not proscribed—that is, the decree [fol. 38] does not forbid any other company engaged in handling or dealing in food commodities from securing a controlling interest in one of the defendants.

The petition brought here allegedly in "aid of this decree" does not, therefore, in fact seek enforcement of the provisions of the decree as they exist. It attempts to go beyond the decree, grounding this attempt upon the so-called "intention of the decree."

[fol. 39] The government argues that the intention of the decree was to keep the meat packer defendants, including Armour, entirely out of all phases of the food business other than their own meat packing operations, and "the combination of Armour and General Host therefrom would place Armour at least indirectly in business barred to it."

The government's contention is that because Armour's acquisition of General Host would violate the decree and because a merger of Armour with General Host would presumably constitute a similar violation, the court must not "defeat equity by permitting form to control substance" and must find that the decree is equally violated if General Host acquires Armour "for the result is equally to place Armour in ownership with a company dealing in products prohibited to Armour."

A contrary conclusion, the government submits, would mean that legality under the decree is dependent upon such factors as corporate structure or which party took the initiative.

The government has chosen to ignore that such factors [fol. 40] as these are still of great relevance in the area

of antitrust law. See, for example, Permalite Mufflers, Incorporated v. International Parts Corporation, 392 U.S. 134, 1969. They are of special significance here where the history behind the decree sheds some light upon the question presented today. When the original decree was entered, the large meat packers were not only dominant in their own industry of meat packing but had also begun to acquire companies manufacturing or selling other foods, availing themselves of the financial resources they had amassed in the meat industry and utilizing their distribution systems and facilities designed for the handling of meats to move with ease into the non-meat food industry. Their dominance in the marketing of meats and their great resources derived from that dominance gave them a substantial advantage over competitors in the remainder of the food industry.

It cannot be questioned that this was the primary motivating factor leading to the court's insistence upon their divestiture of and total divorcement from concerns [fol. 41] dealing with non-meant food commodities.

The situation which the government challenges today, however, is substantially different from that with which the 1920 decree was concerned. Here we have no large meat packer extending its monopolistic grasp toward the rest of the food industry and through the use of its already established distribution facilities, superior financial resources and other means making its dominant position felt, resulting in the restraint of trade by squeezing out present or potential competitors.

[fol. 42] Instead, General Host Corporation, a wholly separate corporate entity, has acquired some shares of Armour stock and evinced an interest in acquiring additional shares.

General Host may, indeed, have, as the Government charges, the ultimate goal of controlling Armour, but this is as yet a largely speculative allegation. It appears from the Government's documents that General Host through some of its divisions and subsidiaries is engaged in dealing in some of the food commoditics which Armour is prohibited from dealing in under the decree, but to say that "placing Armour in ownership with a

THE COURT: Does anyone want to be heard? Would five days be satisfactory?

MISS LINGREEN: We have no objection to that, your Honor.

MR. JENNER: We would welcome an order substantially in the words that your Honor has just uttered with respect to the findings and with respect to leave to us to file additional papers, having in mind the matter of a possible appeal. We were prepared today to proceed with a full hearing.

[fol. 47] Call the next one.

MR. SARBAUGH: May it please the court, may I just thank the Court for the obvious time and attention that the court obviously gave. Even though you didn't rule with us, you certainly gave us careful consideration.

THE COURT: It isn't often I get thanked in those circumstances. I am very grateful.

MR. JENNER: On behalf of General Host, your Honor, of course we thank you for the same reasons.

MR. BERKSON: I haven't been heard yet, but I would like to express my appreciation for the opportunity to be here in the courtroom before you.

THE COURT: We are very glad to have you. We always like to have lawyers from Washington and New York although Mr. Block and Mr. Jenner manage to take care of things in your absence.

MR. BERKSON: They do it very well, sir.

MR. JENNER: You may recall, your Honor, Mr. Berkson is a former head of the Antitrust Division of the Department of Justice.

THE COURT: Here?

MR. JENNER: In Washington.

MR. BERKSON: It was so long ago, your Honor, it is hard to remember, I am afraid.

MR. JENNER: Thank you, your Honor.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Caption Omitted in Printing]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United States of America, plaintiff, appeals to the Supreme Court of the United States from the Order denying its petition for injunction entered in this action on January 30, 1969.

This appeal is taken pursuant to 15 U.S.C. § 29.

/s/ HOWARD E. SHAPIRO
HOWARD E. SHAPIRO
Attorney, Appellate Section
Department of Justice

Dated: March 28, 1969.

SUPREME COURT OF THE UNITED STATES

No. 103, October Term, 1969

UNITED STATES, APPELLANT

v.

ARMOUR & COMPANY, ET AL.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

October 13, 1969

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 374659 454

company dealing in products prohibited to Armour," to use the Government's less than precise language, is not to say that the action must be taken under this decree. Even if General Host has other divisions or subsidiaries in the food industry, and even if it goes on to acquire a controlling interest in Armour, thus placing Armour in ownership, whatever that means, with a company dealing in proscribed products, the 1920 decree has not been violated. In such an instance Armour will not be the par-[fol. 43] ent corporation but the subsidiary. Armour will not be the controlling force but the instrumentality of General Host.

Armour, the Government concedes, is reluctant to see its stock acquired by General Host. The Court cannot assume that even should further acquisition occur, Armour would thereupon commence to control the destiny of its parent's other divisions and subsidiaries which deal in foods. We do have the statement here of Mr. Hodson, counsel for Armour and Company, that supports the Government's position. If there is concern by the Government that any threatened acquisition by General Host—a fact not yet accomplished—poses a genuine threat to free competition in the food industry, both meat and non-meat, then it may be appropriate to bring a separate antitrust action against General Host under the appropriate statute charging restraint of trade, monopolization, or whatever other charges it considers justified by such a possible acquisition. But it is not at the same time warranted in filing a petition in aid of a decree binding Armour when the villain of the piece, if there be a villain, is a corporation not a party to that decree, never [fol. 44] envisioned by its draftsmen as properly within the scope of such decree, and even now only speculatively related to one of the defendants bound by that decree.

I shall not use the 1920 decree as a sword against such a corporation and will not, therefore, adopt the Government's suggestion that I apply 15 USC Section 5 to summon General Host Corporation before the Court for the purpose of entering an injunction against it in aid of that decree.

Now, Mr. Jenner, if you and your associates want to file any documents, any pleadings here, this is the time to do it. Or if you want to accept my views here as a ruling, I direct you to file proposed findings of fact and conclusions of law and judgment order which I perceive I am obligated to file on this application. I may be mistaken in that conclusion since General Host is not a party to this case, but in any event I think it could be helpful if my order came to be reviewed by any other court that that court have the benefit of my observations.

It has been held that oral findings and conclusions [fol. 45] satisfy the requirements of Rule 52, but I have always preferred to see written findings and conclusions. I don't ask you to decide this at the moment; you may have none. You didn't know how this thing was going to go today.

MR. JENNER: Thank you, your Honor. We, of course, did not, and we are inclined at the moment, in consulting with Mr. Bergson, to submit some findings to your Honor as seem to be suggested in your Honor's oral opinion. We would welcome your Honor permitting us to reserve for a day the matter of whether we w sh to file something via supplementation insofar as the record is concerned.

THE COURT: I had that in mind. If any court came to review my order here today, if, indeed, an appeal was taken, it should have the benefit of the position of the parties stated.

MR. JENNER: That is what activated my conferring with Mr. Bergson.

THE COURT: What order in that event do you suggest? Leave to General Host Corporation to file such documents as it and its counsel may deem appropriate within five days, reserving the right—that is, the right [fol. 46] in General Host—not to file anything if it concludes not to do so?

But I do order you, I order General Host to file proposed findings of fact and proposed conclusions of law and proposed judgment order within—how long?

MR. JENNER: We can do it very promptly, your Honor. Would five days be satisfactory?